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Access to Justice for Migrant Workers: Evaluating Legislative Effectiveness in Canada

Bethany Hastie

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Introduction

In 2018, the BC legislature introduced the *Temporary Foreign Worker Protection Act* (TFWPA), legislation which, at its core, requires the registration and licensing of recruiters and employers of temporary foreign workers in the province. Like legislative regimes previously introduced in other provinces, this statute aims to protect temporary foreign workers. As Labour Minister, the Hon. Harry Bains, noted:

...we need to understand what the purpose behind this Temporary Foreign Worker Protection Act is. It is to protect the temporary foreign workers from recruiters and from some employers.

The recruiters. We are trying to fix that problem by having them licensed. They recruit for any industry and for any region of the province.

Then we have a few employers where we have some complaints. The complaints are in many forms: bullying, intimidation, taking possessions from temporary foreign workers such as passports, not paying the wages that they're entitled to, or not according to the law. ...

The idea is to make sure that those temporary foreign workers who come to B.C. are protected from recruiters, from all those illegal fees that they may charge, and from some employers who take advantage of them and also put the good employers at a disadvantage economically.¹

Bains' statement highlights a second key element stressed in legislative debates: the provinces' economic interest in creating a fairer labour market for foreign workers. When introducing the bills, Ministers stressed the potential for foreign workers to satisfy provincial labour shortages given suitably equitable working conditions.² These two aims, protection of vulnerable workers and the creation of a fair labour market, establish the core of the legislative regime in BC, as with other provinces.

¹ British Columbia, Legislative Assembly, Hansard, 41st Parl, 3rd Sess, (7 November 2018) at 6402 [*BC Hansard*]. See also BC Hansard, *supra* note 1, (29 October 2018) at 5988.

² British Columbia, Legislative Assembly, Hansard, 41st Parl, 3rd Sess, (29 October 2018) at 5987 [*Harry Bains*]: "B.C.'s workforce is bolstered by international workers. Our economy and our province are stronger and more diverse because of these workers." See also Manitoba, Legislative Assembly, Hansard, 39th Leg., 2nd Sess (14 May 2008) at 2134-2135 [*MB Hansard*]; Nova Scotia, Legislative Assembly, Hansard, 61st Gen. Assembly, 3rd Sess (6 May 2011) at 1899-1900 [*NS Hansard*]; Saskatchewan, Legislative Assembly, Hansard, 27th Leg., 2nd Sess (4 December, 2012) at 2369 [*SK Hansard*]. As the Hon. Bill Boyd (Sask. Party, Minister Responsible for the Economy) put it, "it's about fairness for newcomers and ensuring Saskatchewan continues our strong reputation as a preferred destination for immigrants.": SK Hansard, *supra* note 2.

The BC legislation is not the first in Canada. Today, five provinces have dedicated legislation of a similar nature: Manitoba; Saskatchewan; Nova Scotia; New Brunswick; and, Quebec. In each province, the stated purpose of the legislation is to better protect foreign workers from exploitation by recruiters and employers³ including in relation to deception about job prospects and conditions⁴ and charging workers fees for their employment⁵.

This report analyzes, compares and contrasts the growing number of provincial legislative schemes aimed at addressing known recruitment and employment abuses of temporary foreign workers through registration and licensing schemes, with a view to identifying best practices and recommendations for further improvement that will enable the effective operationalization of these statutes and the realization of their core goals to protect temporary foreign workers in Canada.

Overview of Legislative Regimes

As mentioned above, six provinces in Canada have legislative schemes, either independent or incorporated under existing labour and employment statutes,⁶ that create mandatory licensing and registration regimes for either or both of recruiters and employers of temporary foreign workers.⁷

Each provincial statute focuses centrally on protecting workers through a prohibition on charging workers fees for employment.⁸ In addition, each statute requires the licensing and registration of recruiters and employers of temporary foreign workers which is seen as critical for ensuring that recruiter and employer behaviour complies with all relevant laws.⁹ Licensing and registration provides an initial means of oversight, permitting regulatory actors to collect information and conduct investigations into the applicants, their affiliates and their past conduct. The threat of amending, suspending or cancelling a licence or registration also creates incentive for licensees to adhere to the legislation. Given its importance to the functioning of most provinces' legislation, this, rather than the

³ BC Hansard, *supra* note 1, (23 October 2018) at 165B: 1010; MB Hansard, *supra* note 2; NS Hansard, *supra* note 2; SK Hansard, *supra* note 2; New Brunswick, Legislative Assembly, Journal of Debates (Hansard), 4th Sess, 57th Leg (11 March 2014) at 52 [*NB Hansard*]; Québec, National Assembly, Journal des Débats (Hansard), 41st Parl, 1st Sess, Vol 44, No 344 (31 May 2018) at 21867.

⁴ See, e.g., MB Hansard, *supra* note 2; NS Hansard, *supra* note 2.

⁵ See, e.g., NS Hansard, *supra* note 2: As the Hon. Marilyn More (NDP, Minister of Labour and Advanced Education) put it on second reading, “[i]t is a basic principle of employment law that workers do not pay for jobs”.

⁶ New Brunswick, Nova Scotia and Quebec incorporate legislative provisions on these topics within broader labour and employment legislation. See: Bill 22, *An Act to Amend the Employment Standards Act*, 4th Sess, 57th Leg, New Brunswick, 2014 (assented to 26 March 2014).

⁷ In addition to the 6 provinces analyzed in this report, Ontario has the Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), 2009, SO 2009, c 32. While this statute prohibits the charging of recruitment fees, it does not create a licensing or registration regime for employers or recruiters of temporary foreign workers, and as such, is excluded from this study.

⁸ Note that this prohibition commonly exists also in provincial employment standards legislation, such as in BC and Alberta.

⁹ See, e.g., BC Hansard, *supra* note 1, (29 October 2018) at 5988.

prohibition on fees, might fairly be regarded as the central feature of foreign worker protection legislation.

As set out in Table 1, the scheme of each statute exhibits a common model based on four features: licensing and registration; obligations and prohibitions; investigation; and, enforcement. Recruiters and/or employers must apply for a licence or registration permitting them to carry out activities regulated by the Act. Recruiters and employers become responsible for various obligations and prohibitions by carrying out these activities. Enforcement is enabled through investigations including: the collection of information through the application process; complaints or pro-active audits and investigations; and, the obligation upon recruiters and employers to compile information on an ongoing basis. Enforcement itself is carried out through suspension or cancellation of licences or registration, or, in more serious cases, through administrative penalties or regulatory offences.

Table 1: Summary of legislative features under each provincial statute

	MB	SK	NS	BC	QC	NB
Employer registration	✓	✓	✓	✓		✓
Public employer registry				✓		
Public registry of fined/sanctioned employers	✓				✓	
Recruiter licensing	✓	✓	✓	✓	✓	
Public recruiter registry	✓	✓	✓	✓	✓	
Public registry of suspended recruiters						
Complaint-based investigations	✓	✓	✓	✓	✓	✓
Proactive audits	✓	✓	✓	✓	✓	✓

Provincial legislation centers on three main actors: foreign workers; foreign worker recruiters; and, employers. The definitions of these actors are fairly consistent across provinces.

“Foreign workers” are defined in two ways: as foreign nationals who are employed or seeking employment¹⁰ or as foreign nationals who are recruited for work.¹¹ Under the Quebec legislation, “temporary foreign worker” is defined more specifically as “a foreign national who is staying or wishes to stay temporarily in Québec to carry out work with an employer under the Temporary Foreign

¹⁰ Temporary Foreign Worker Protection Act, SBC 2018, c 45, s 1 [BC Act]; The Foreign Worker Recruitment and Immigration Services Act, SS 2013, c F-18.1, s 2(h) [SK Act]; Employment Standards Act, SNB 1982, c E-7.2, s 38.9(1) [NB Act].

¹¹ The Worker Recruitment and Protection Act, CCSM, c W197, s 1 [MB Act]; Labour Standards Code, RSNS 1989, c 246, s 2(fa) [NS Code]. Note that Manitoba excludes some classes of foreign nationals from the definition of a “foreign worker,” specifically those falling under ss. 186, 204-208 of the Immigration and Refugee Protection Regulations, SOR/2002-227: The Worker Recruitment and Protection Regulation, M Reg 21/09, s 4 [MB Regulation]. This includes those admitted without the need for a permit; pursuant to international agreements; whose admission is in Canadian interests; who lack other means of support; who have a spouse or family member in Canada; or who are admitted for humanitarian reasons. A number of the relevant legislative schemes also apply beyond foreign workers, including in Manitoba and Québec.

Worker Program provided for in Division II of Chapter II of the *Québec Immigration Regulation*.¹² In New Brunswick, the definition of “foreign worker” deliberately refuses to specify whether foreign workers are temporary in an effort to clarify that the definition encompasses all foreign workers, regardless of whether they have entered Canada under the federal Temporary Foreign Worker Program (TFWP), the Seasonal Agricultural Foreign Worker Program, or any other potential program,¹³ a scope similar to other provinces with this type of legislation.

“Foreign worker recruiters” are defined in most provinces as those providing paid “recruitment services.” In BC, Nova Scotia and Saskatchewan, “recruitment services” include: finding or attempting to find employment for a foreign national; finding or attempting to find a foreign national for employment; assisting or advising anyone in doing either of the above; and, referring a person to others who do the above.¹⁴ By contrast, Manitoba’s legislation defines recruitment services more narrowly, as finding foreign workers for employment or finding employment for foreign workers.¹⁵ Manitoba requires that recruiters be members in good standing of a provincial bar association or the Immigration Consultants of Canada Regulatory Council, further reducing the pool of potential applicants.¹⁶ The definitions of recruiting in Manitoba and Nova Scotia are independent of recruiter remuneration,¹⁷ whereas foreign worker recruiters in other provinces only fall under the relevant legislation if they provide their services for a fee.

Except for Saskatchewan, which does not define the term, “employers” in all provinces are defined as under the relevant employment standards legislation.¹⁸

New Brunswick, Saskatchewan, and Quebec each include a fourth category of actor: immigration consultants. Immigration consultants are defined as any person who provides immigration services for a fee or compensation.¹⁹ Saskatchewan and Quebec are the only jurisdictions whose foreign worker legislation extends to immigration consultants.²⁰ Unlike these jurisdictions, in New Brunswick, immigration consultants are not under any licensing requirements. Rather, they are relevant to the

¹² Regulation respecting personnel placement agencies and recruitment agencies for temporary foreign workers, CQLR c N-1.1, r.0.1, s 1 [QC Regulation].

¹³ NB Hansard, *supra* note 3 at 49.

¹⁴ BC Act, *supra* note 10, s 1; NS Code, *supra* note 11, s 2(oa); SK Act, *supra* note 10, s 2(q). Nova Scotia only defines “recruitment,” not “foreign worker recruiters.” Québec’s legislation is similar, defining recruitment agencies as a “person, partnership or other entity that has at least one activity consisting in offering to a client enterprise services related to the recruitment of temporary foreign workers, which services may include assisting workers in their efforts to obtain a work permit” but excludes public bodies such as governments, school boards, and public transportation companies: Act respecting labour standards, CQLR c N-1.1, s 1 [QC Act]. Saskatchewan and BC’s legislation also include immigration consultants, a category which is not separately considered or analyzed in this report. See also SK Act, *supra* note 10 at s 2(k); BC Act, *supra* note 10, s 1.

¹⁵ MB Act, *supra* note 11 at s 1.

¹⁶ MB Regulation, *supra* note 11, s 6.

¹⁷ NS Code, *supra* note 11, s 2(oa); MB Act, *supra* note 11, s 1.

¹⁸ BC Act, *supra* note 10 at s 1; MB Act, *supra* note 11, s 1; NB Act, *supra* note 10, s 38.9(2); NS Code, *supra* note 11, s 2(e); QC Act, *supra* note 14, s 1. Nova Scotia’s Act is the relevant employment standards legislation.

¹⁹ NB Act, *supra* note 10, s 38.9(1); SK Act, *supra* note 10, s 2(f); QC Regulation, *supra* note 12, s 1.

²⁰ SK Act, *supra* note 10, s 4(1); QC Regulation, *supra* note 12, s 2.

legislation insofar as employers are prohibited from requiring a foreign worker to use an immigration consultant as a condition of employment.²¹

Under each provincial regime, a relevant government body is assigned as the statutory authority, responsible for administration and enforcement of the statute. In most provinces, this authority is located with the Employment Standards or Labour branches of government. For example, in BC, the Director of Employment Standards is responsible for overseeing and administering the *TFWPA* including approving and denying licence applications²² and establishing and maintaining a registry of employers and recruiters.²³ The Director of Employment Standards in each of Manitoba and New Brunswick similarly holds authority for the administration and enforcement of their respective legislation.²⁴ Similarly, in Saskatchewan, responsibility for *The Foreign Worker Recruitment and Immigration Services Act* (FWRISA) was transferred to the Ministry of Labour Relations and Workplace Safety in 2017.²⁵ The Director of Labour Standards is similarly responsible for administration and enforcement of the relevant provisions regarding foreign workers in Nova Scotia.²⁶ In Quebec, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) supervises the implementation and application of labour standards, including provisions of the Act and Regulation specific to the protection of temporary foreign workers.²⁷

Several provinces also have dedicated investigation and enforcement units. In Saskatchewan, the Program Integrity Unit (PIU) carries out investigations and audits to enforce the Act and Regulations.²⁸ Similarly, under the Manitoba Employment Standards Division, the Special Investigation Unit (SIU) is responsible for identifying and investigating violations under *The Worker Recruitment and Protection Act* (WRAPA).²⁹ Finally, BC created a dedicated Temporary Foreign Worker Protection Unit (TFWPU)

²¹ NB Act, *supra* note 10, ss 38.9(1), 38.91(1).

²² BC Act, *supra* note 10, ss 3(1), 10(1).

²³ BC Act, *supra* note 10, s 29(1).

²⁴ MB Act, *supra* note 11, s 1; MB Act, *supra* note 11, s 19(2); NB Act, *supra* note 10, ss 45(1)–(2); Nova Scotia, Department of Labour and Advanced Education, *Guide to the Nova Scotia Labour Standards Code: 2019* (Halifax: Department of Labour and Advanced Education, 2019) Labour Board <novascotia.ca/lae/employmentrights/docs/LabourStandardsCodeGuide.pdf> accessed 19 June 2021 at 43–45 [*Guide to the Nova Scotia Labour Standards Code*].

²⁵ Saskatchewan, Ministry of Labour Relations and Workplace Safety, *Annual Report for 2017-18* (Regina: Ministry of Labour Relations and Workplace Safety, 2018) <publications.saskatchewan.ca/#/home> accessed 19 June 2021 at 10.

²⁶ Guide to the Nova Scotia Labour Standards Code, *supra* note 24 at 43-45.

²⁷ "Temporary Workers" (last modified 2 April 2020), online: *Immigration Québec* <immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/index.html>.

²⁸ "Resolving Immigration Issues and Complaints" (last modified 19 June 2021), online: *Government of Saskatchewan* <saskatchewan.ca/residents/moving-to-saskatchewan/live-in-saskatchewan/by-immigrating/resolving-immigration-issues-and-complaints>; "Evaluating Migrant Worker Rights in Canada: 2018" (May 2018), online (pdf): *Canadian Council for Refugees* <ccrweb.ca/sites/ccrweb.ca/files/reportcards_complete_en.pdf> at 11 [CCR, "Provincial Report Cards"].

²⁹ "Special Investigations Unit" (last modified 19 June 2021), online: *Government of Manitoba* <gov.mb.ca/labour/standards/special_investigations_unit.html> [*SIU Manitoba*].

within the Employment Standards Branch to enforce the *TFWPA*.³⁰ The body conducts complaint-based investigations and proactive audits of employers to ensure compliance with the Act.³¹

Report Overview

This report compares and analyzes the legislative regime in each province with a view to identifying best practices and recommendations for further improvement to support the effective operationalization of these regimes and their intended objectives. This report is based on research collected from existing legal materials and literature including: the relevant statutes in each jurisdiction; Hansard and other background documents; publicly available information on the statutes, their interpretation and application in each province; statistics and information available through federal government websites; scholarly literature; and, existing research and evaluative reports about the provincial legislation.³²

The provinces that form the core of the analysis in this report are those with legislation or legislative provisions specifically addressing foreign worker recruitment and employment and which create some licensing or registration regime for either or both of recruiters and employers: British Columbia; Saskatchewan; Manitoba; Quebec; New Brunswick; and, Nova Scotia. For this reason, two provinces with relevant legislation are excluded. First, in Ontario, the *Protection for Foreign Nationals Act* addresses well-documented issues for temporary foreign workers by prohibiting the charging of recruitment fees and prohibiting the seizure and retention of workers' documents.³³ However, this statute does not create a licensing or registration system for recruiters or employers. Conversely, in Alberta, the *Employment Agency Business Licensing Regulation* does operate to regulate employment recruitment agencies within the province.³⁴ This regulation requires all agencies to be licensed by Service Alberta and prohibits charging a recruitment fee or advising an employer that they may recover recruitment costs from workers.³⁵ However, this regulation is of general application and not uniquely targeted to addressing issues facing foreign workers in the province. As such, while the regulations would apply to recruiters who engage in services relating to foreign worker recruitment, as a law of general application, this has similarly been excluded from this study.

Chapter 1 provides an overview of temporary foreign workers in Canada, the federal regulatory structure that governs their entry under (im)migration programs, and the documented issues and

³⁰ See, e.g., "Register as an Employer of Temporary Foreign Workers", online: *Government of BC* <gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/hiring/hire-temporary-foreign-workers/register-as-employer>.

³¹ BC Act, *supra* note 10, s 32(a).

³² As a part of the research for this report, Freedom of Information requests were made to relevant provincial authorities. However, these requests were inconsistently responded to, and the quality and quantity of information available insufficient to support a robust empirical analysis for this report.

³³ Employment Protection for Foreign Nationals Act (Live-in Caregivers and Others), SO 2009, c32, ss 7(1), 9(1) [ON Act].

³⁴ Employment Agency Business Licensing Regulation, Alta Reg 45/2012 [AB Regulation].

³⁵ AB Regulation, *supra* note 34, s. 5; "Resources for Temporary Foreign Workers" (last updated 21 June 2021), online: *Government of Alberta* <alberta.ca/resources-temporary-foreign-workers.aspx>.

challenges that temporary foreign workers face in Canada. Chapters 2 to 5 go on to analyze, compare and contrast the provincial legislative regimes along the four core features identified earlier: licensing and registration; obligations and prohibitions; investigations; and, enforcement. Chapter 6 concludes by setting out key recommendations and best practices that should inform BC's approach to implementing and enforcing its legislation.

1. Federal Regulation of Temporary Foreign Workers in Canada

In Canada, temporary foreign workers are regulated by both federal and provincial laws. While provincial laws regulate the employment terms and conditions of temporary foreign workers, the federal government regulates immigration programs through which migrant workers may enter Canada. This chapter explains the Temporary Foreign Workers Program. This program is a key stream through which workers temporarily enter Canada to labour in a wide array of industries. Moreover, as discussed below, the TFWP relies on third-party recruiters to match temporary foreign workers with employers, making it the most likely program through which provincial legislation regulating recruitment of temporary foreign workers will apply.

1.1 Overview of the TFWP in Canada

The Temporary Foreign Worker Program was piloted in Canada first in the 1970s, though it expanded to include low-wage (or “low-skill”) work in the early 21st century.³⁶ Since then, use of the TFWP for low-wage occupations has expanded considerably and now includes caregiving and agricultural streams in addition to the general low-wage stream. Other industries commonly employing low-wage temporary foreign workers include food services, food processing, hospitality, and construction.³⁷ In addition to the TFWP, migrants may come to Canada for work under the Seasonal Agricultural Workers Program (SAWP), which recruits seasonal agricultural workers through formal bilateral agreements with other countries, and the International Mobility Program, which includes workers coming to Canada under international agreements, working holidaymakers, spouses of high-skilled workers, and post-graduate work permit holders, amongst others.³⁸

³⁶ Fay Faraday, *Made in Canada: How the Law Constructs Migrant Workers Insecurity* (2012), online: Metcalf Foundation <exhibits.library.utoronto.ca/items/show/2334> at 25-26 [Faraday, “Made in Canada”].

³⁷ *Ibid.*

³⁸ Sarah Marsden, Eric Tucker, & Leah Vosko, “Flawed by Design? A Case Study of Federal Enforcement of Migrant Workers’ Labour Rights in Canada” (2021) 23:1 CLEJ 71 at 79 [Marsden, Tucker & Vosko].

Table 2: TFWP work permit holders by province and territory in recent years³⁹

	2017	2018	2019	2020
Nunavut	55	55	10	15
Northwest Territories	35	20	30	25
Yukon Territories	95	95	115	75
British Columbia	16,800	20,435	24,360	19,685
Alberta	7,460	7,090	8,880	6,705
Saskatchewan	820	810	930	605
Manitoba	765	1,170	1,315	950
Ontario	28,665	31,785	33,845	29,955
Quebec	13,030	17,660	23,225	21,995
Nova Scotia	1,580	2,030	2,225	2,075
New Brunswick	1,275	1,320	1,685	1,355
Prince Edward Island	605	820	1,020	430
Newfoundland & Labrador	865	410	440	955
Province/territory not stated	6,605	535	280	110
Total	78,470	84,005	98,070	84,690

As the above table illustrates, BC, Ontario and Quebec intake a significant proportion of temporary foreign workers under the TFWP each year and the number of temporary foreign worker permit holders remains a steady source of labour for Canada today.

1.2 The Regulatory Structure of the TFWP

As noted above, the TFWP has existed in Canada since the 1970s. This program has changed substantially over time, and first included a “low-skilled pilot” stream in the early 2000s. Since then, low-wage occupations have expanded under this program and it has also expanded to include an agricultural stream and to subsume the previously independent Caregivers Program.⁴⁰ Migrants who enter under the TFWP may come to Canada to labour in both high- and low-wage positions⁴¹ in a wide array of industries, including caregiving, agriculture, construction, food services, hospitality, and retail.

³⁹ Statistics Canada, Immigration, Refugees and Citizenship Canada, Canada - Temporary Foreign Worker Program work permit holders by province/territory of intended destination, program and year in which permit(s) became effective (Ottawa: Statistics Canada, 2017) <open.canada.ca/data/en/dataset/360024f2-17e9-4558-bfc1-3616485d65b9> accessed 21 June 2021.

⁴⁰ Faraday, “Made in Canada”, *supra* note 36 at 26.

⁴¹ Determined based on the median wage in each province. See “Hire a temporary foreign worker in a high-wage or low-wage position” (25 February 2021), online: *Employment and Social Development Canada* <canada.ca/en/employment-social-development/services/foreign-workers/median-wage.html>.

While the federal government, notably Employment and Social Development Canada (ESDC) and Immigration, Refugees and Citizenship Canada (IIRC), facilitate approval and permitting for this program, recruitment is largely a privatized endeavour.

To participate in the TFWP, an employer in Canada must first obtain a Labour Market Impact Assessment (LMIA) from ESDC. The LMIA application must demonstrate that there is a labour shortage requiring the employer to hire a foreign worker.⁴² Once an employer has an approved LMIA, they may work with a third-party recruiter to hire a foreign worker. Once a worker has a signed contract with an approved employer, the worker can then submit an application for a visa to enter Canada for immigration purposes and an application to obtain a work permit to allow them to work under this program in Canada. Work permits are provided for an initial designated period of time and may be renewed prior to expiry. Work permits under the TFWP are considered “closed” because the work permit designates the specific employer, occupation and location of work, and is not transferable. This means that a temporary foreign worker cannot change employers, jobs or location of work without obtaining a new work permit.⁴³

At the federal level, ESDC is centrally involved in the administration of the TFWP, including overseeing the application and approval of LMIA's for employers, setting out minimum conditions of employment in a standard form contract, and conducting investigations of employers. As part of the LMIA approval process, employers are provided with a sample contract that includes prescribed obligations for hiring and employing a temporary foreign worker. These include: paying for the worker's transportation costs and not recouping those costs from the worker; not charging or recouping recruitment fees to or from a worker; registering the worker under the relevant provincial workplace safety insurance regime; providing interim health insurance to the worker; providing written notice of termination; and, charging reasonable costs for accommodation.⁴⁴ Other contractual terms are left blank for the employer to fill in including: wage rate; payment intervals; cost of accommodation; length of work term; assigned tasks and functions; vacation and sick leave entitlements; and, length of breaks.⁴⁵ Although these terms are left blank, an employer must simultaneously comply with provincial employment standards legislation, which sets out minimum rights and obligations in respect of many of these terms, such as wages, hours of work, vacation pay, sick days, and breaks.

Once a temporary foreign worker arrives in Canada, their employment relationship, housing, and related issues, are largely governed by provincial laws. Formally in Canada, temporary foreign workers have the same rights and entitlements as resident and citizen workers under provincial labour,

⁴² “Temporary Workers” (05 January 2021), online: *Immigration, Refugees and Citizenship Canada* <<https://www.canada.ca/en/immigration-refugees-citizenship/corporate/publications-manuals/operational-bulletins-manuals/temporary-residents/foreign-workers.html>>

⁴³ See, e.g., Marsden, Tucker & Vosko, *supra* note 36 at 79; Bethany Hastie, “The Inaccessibility of Justice for Migrant Workers: A Capabilities-Based Perspective” (2017) 34:2 Windsor Y.B. Access Justice 20 at 31 [*Hastie*]; Faraday, “Made in Canada”, *supra* note 36 at 77.

⁴⁴ Employment and Social Development Canada, *Employment Contract* (Ottawa: Employment and Social Development Canada) <https://www.canada.ca/content/dam/esdc-edsc/documents/services/foreign-workers/median-wage/low/employment_contract.pdf> at 1 [*Employment Contract*].

⁴⁵ *Ibid.*

employment, human rights, and occupational health and safety laws. As such, sources of labour and related rights for temporary foreign workers in Canada exist at both provincial and federal levels.

Since 2016, ESDC has engaged in investigations of employers who have approved LMIA's and employ temporary foreign workers. Investigations are stated to be conducted on the basis of random audits, tips or complaints received, and previous non-compliance.⁴⁶ ESDC retains jurisdiction to investigate employers of migrant workers for compliance with both the terms of the LMIA, as well as applicable workplace laws, which formally reside largely within provincial jurisdiction under Canada's Constitution.⁴⁷ Names and information of non-compliant employers, along with their infractions and penalties, are published online.⁴⁸ From an unspecified date in 2016 to July 2020, the website has recorded 248 entries of non-compliant employers of temporary foreign workers and the penalties ranged from \$1000 fines to 2-year bans from employing temporary foreign workers.⁴⁹

One of the difficulties historically associated with administration and enforcement of the TFWP, and laws related to its operation, is the lack of information sharing between provinces and the federal government. Due to the jurisdictional divide, provinces are responsible for enforcing employment and related workplace laws, but have no knowledge of where temporary foreign workers are employed in the province because of the lack of information from the federal government who is responsible for approving work and immigration permits for employers and workers under the TFWP.

The gap in information about migrant workers in the province, for example, formed part of the basis for the introduction of the legislative regimes that are the subject of this report. For example, as noted by the Hon. Jody Carr (Minister of Post-Secondary Education, Training, and Labour) during passage of New Brunswick's bill, the provincial government did not have access to information beyond the total number of temporary foreign workers in the province.⁵⁰ Thus, the creation of a registry of employers of foreign workers was primarily addressed as a means to collect information from employers including "the amount of wages being paid, the location of employment, and the legal names of the companies" to aid in making "provincially driven program decisions" and "representations to the federal government in terms of improving federal programs."⁵¹

As such, one significant impact of provincial legislation that requires the registration of both recruiters and employers of migrant workers is that provincial authorities now have information about where

⁴⁶ "Temporary Foreign Worker Program Compliance" (29 April 2020), online: *Employment and Social Development Canada* <canada.ca/en/employment-social-development/services/foreign-workers/employer-compliance.html#h2.01-h3.03>. For a critical analysis of ESDC's investigation and enforcement mechanisms, see Marsden, Tucker & Vosko, *supra* note 36.

⁴⁷ Sarah Marsden, "Who Bears the Burden of Enforcement: The Regulation of Workers and Employers in Canada's Migrant Work Programs" (2019) 22:1CLELJ 1 at 7; Marsden, Tucker & Vosko, *supra* note 36 at 82-83.

⁴⁸ CCR, "Provincial Report Cards", *supra* note 28 at 4.

⁴⁹ "Employers who have been found non-compliant" (22 April 2020), online: *Government of Canada* <canada.ca/en/immigration-refugees-citizenship/services/work-canada/employers-non-compliant.html#table1>.

⁵⁰ NB Hansard, *supra* note 3 at 52.

⁵¹ *Ibid* at 52-53.

temporary foreign workers are employed in the province, enabling enforcement of provincial employment and related laws, such as in relation to both new and existing prohibitions on charging recruitment fees, wages, hours of work, occupational health and safety, housing, and other matters.

1.3 Recruitment Abuses

Documented recruitment abuses that temporary foreign workers in Canada have experienced relate to both the charging of recruitment fees and misinformation regarding the terms and conditions of employment.

Recruiters of temporary foreign workers coming to Canada have long been documented as charging exorbitant recruitment fees⁵² despite the fact that domestic legislation has commonly prohibited charging such fees under generally applicable employment standards legislation. Documented cases of recruitment fees being charged have ranged from \$1,000 CAD to \$25,000.⁵³ Low-wage temporary foreign workers on the international labour market are more likely to be charged higher recruitment fees than high-wage temporary foreign workers.⁵⁴ In some cases, workers may be asked to pay more than the agreed amount after they arrive at the destination country.⁵⁵ Some recruiters also charge additional recruitment fees to facilitate a change in employment.⁵⁶ To pay for the recruitment fees, temporary foreign workers often take out loans.⁵⁷

⁵² See, e.g., Fay Faraday, *Profiting from the Precarious: How Recruitment Practices Exploit Migrant Workers* (2014), online: Metcalf Foundation <metcalffoundation.com/site/uploads/2014/04/Profiting-from-the-Precarious.pdf> at 32 [Faraday, "Profiting from the Precarious"]; Caregivers Action Centre, *Submission by the Caregivers' Action Centre – Changing Workplaces Review* (2015), online: Migrant Workers Alliance for Change <migrantworkersalliance.org/wp-content/uploads/2015/11/CAC-CRW-submissions.pdf> at 3 [CAC, "Changing Workplaces"]; Faraday, "Made in Canada", *supra* note 36 at 62; Gesualdi-Fecteau et al, "A Story of Debt and Broken Promises? The Recruitment of Guatemalan Migrant Workers in Québec" (2017) 30:2 RQDI 95 at 98 [Gesualdi-Fecteau et al]; Jelena Atanackovic & Ivy Lynn Bourgeault, "The Employment and Recruitment of Immigrant Care Workers in Canada" (2013) 39:2 Can Pub Pol'y 335 at 337 [Atanackovic & Bourgeault].

⁵³ Caregivers' Action Centre et al, *Submission to the Ministry of Labor: Consultation on Foreign and Resident Employment Recruitment in Ontario* (2009), online (pdf): Workers' Action Centre <<https://workersactioncentre.org/wp-content/uploads/2016/07/WAC-PCLS-CAC-Submission.pdf>> at 12 [CAC, "Submission"]; CAC, "Changing Workplaces", *supra* note 52 at 3; Faraday, "Profiting from the Precarious", *supra* note 52 at 32; Gesualdi-Fecteau et al, *supra* note 52 at 98.

⁵⁴ Christiane Kuptsch ed. & Philip Martin, *Merchants of Labor* (Geneva: International Labour Organization (International Institute for Labour Studies, 2006) at 15; Dovelyn Agunias, *What We Know About Regulating the Recruitment of Migrant Workers* (2013), online: Migration Policy Institute <migrationpolicy.org/research/what-we-know-regulating-recruitment-migrant-workers> at 4.

⁵⁵ Faraday, "Profiting from the Precarious", *supra* note 52 at 32; West Coast Domestic Workers' Association, *Access to Justice for Migrant Workers in British Columbia* (2013), online: Migrant Workers Centre <https://mwcbc.ca/downloads/AccessToJusticeForMigrantWorkers_WCDWA_FINAL_30072013.pdf> at 26 [West Coast Domestic Workers' Association].

⁵⁶ Atanackovic & Bourgeault, *supra* note 52 at 337; Faraday, "Made in Canada", *supra* note 36 at 63; West Coast Domestic Workers' Association, *supra* note 55 at 25.

⁵⁷ Bassina Farbenblum, "Governance of Migrant Worker Recruitment: A Rights-Based Framework for Countries of Origin" (2017) 7:1 Asian J of Intl L 152 at 157; Faraday, "Made in Canada", *supra* note 36 at 43; Faraday,

Recruiters use various methods to avoid enforcement of Canadian legislations that prohibit recruitment fees. For example, some recruiters do not provide receipts to the temporary foreign workers, some demand the workers to pay the fees to offshore accounts⁵⁸ or to pay the fees before they arrive in Canada.⁵⁹ In addition, enforcement of legislation in some provinces is complaints-based and temporary foreign workers may be less able and willing to access the complaint system due to their precarious status.

"I paid an agency 9 months-worth of my salary back home. When we arrive here with these debts, we need to pay back the debt while supporting our children and families back home. It makes asserting our rights very difficult. These fees are currently illegal but there is no way to prevent them from being charged." Y⁶⁰

In addition to recruitment fees, issues have been documented regarding misinformation concerning the terms and conditions of employment for migrant workers coming to Canada with the assistance of a third-party recruiter. Types of misinformation may include the job promised does not exist⁶¹ and/or the terms of employment are different than agreed upon or expected, such as in relation to occupation, wages, hours or standards of accommodation.⁶² In some cases, a worker can be forced by their financial circumstances or persuaded by recruiters to work in a different job or for a different employer than that listed on their work permit (so called "working out-of-status").⁶³ Finally, recruiters may provide misinformation regarding a temporary foreign worker's eligibility for permanent immigration to Canada, which may have influenced the worker's decision to accept the employer offer and/or take on debt to finance the arrangement.⁶⁴

"Profiting from the Precarious", *supra* note 52 at 38; Gesualdi-Fecteau et al, *supra* note 52 at 107; Faraday, "Made in Canada", *supra* note 36 at 63.

⁵⁸ West Coast Domestic Workers' Association, *supra* note 55 at 25.

⁵⁹ The Alberta Federation of Labor, *Temporary Foreign Workers: Alberta's Disposal Workforce* (2007), online: The Alberta Federation of Labor <https://www.afl.org/temporary_foreign_workers_alberta_s_disposable_workforce> at 11 [AFL, "Alberta's Disposable Workforce"]; The Alberta Federation of Labor, *Entrenching Exploitation* (2009), online: The Alberta Federation of Labor <https://www.afl.org/entrenching_exploitation_second_rept_of_afl_temporary_foreign_worker_advocate> at 13 [AFL, "Entrenching Exploitation"].

⁶⁰ CAC, "Changing Workplaces", *supra* note 52 at 7.

⁶¹ AFL, "Alberta's Disposable Workforce", *supra* note 59 at 7; Faraday, "Made in Canada", *supra* note 36 at 63; Gesualdi-Fecteau et al, *supra* note 52 at 99; West Coast Domestic Workers' Association, *supra* note 55 at 25.

⁶² AFL, "Entrenching Exploitation", *supra* note 59 at 12; AFL, "Alberta's Disposable Workforce", *supra* note 59 at 10; Atanackovic & Borgeault, *supra* note 52 at 337; CAC, "Submission", *supra* note 53 at 6; Faraday, "Made in Canada", *supra* note 36 at 63.

⁶³ Faraday, "Profiting from the Precarious", *supra* note 52 at 38; West Coast Domestic Workers' Association, *supra* note 55 at 25.

⁶⁴ AFL, "Alberta's Disposable Workforce", *supra* note 59 at 7; AFL, "Entrenching Exploitation", *supra* note 59 at 12; Gesualdi-Fecteau et al, *supra* note 52 at 98.

"I was a chef in Jamaica for years, working in three- and four-star resorts in Ochos. I was trained to do this. I was told by the recruiter that I would have the same job in Canada, using my skills. When I arrived here they said that I would be cleaning hotel rooms. This was a shock, but I had already resigned my job at home and I couldn't just go back empty-handed. So I stayed, but I am very angry." Jamaican temporary foreign worker working at a major international hotel chain in Ontario⁶⁵

Issues arising from the charging of recruitment fees and misinformation about the intended employment may be further compounded by employer abuses. ESDC provides a sample employment contract that must be signed by both the employer and worker and submitted to ESDC in order for the employer to obtain a positive LMIA and to Citizenship and Immigration Canada (CIC) for the worker to obtain a work permit. However, the promises made by the employer to the worker in the contract submitted are often not realized. In addition to terms stating the hours and wage, the sample contract specifies that the employers shall not recoup recruitment costs from the employee and shall pay for transportation costs.⁶⁶ In practice, employers continue these prohibited practices.⁶⁷

The issues and challenges arising from documented abuses in the recruitment and employment of temporary foreign workers, as set out in this chapter, form the basis for the legislative responses across provinces, including in BC. It is these very issues that legislation requiring the registration of recruiters and employers aims to tackle.

⁶⁵ United Food and Commercial Workers, *Report on the Status of Migrant Workers in Canada 2011* (2011), online: United Food and Commercial Workers <<https://www.ufcw.ca/templates/ufcwcanada/images/Report-on-The-Status-of-Migrant-Workers-in-Canada-2011.pdf>> at 15 [UFCW, "2011 Report"].

⁶⁶ Employment Contract, *supra* note 44 at 3; Faraday, "Made in Canada", *supra* note 36 at 32.

⁶⁷ AFL, "Entrenching Exploitation", *supra* note 59 at 1; AFL, "Alberta's Disposable Workforce", *supra* note 59 at 12; CAC, "Submission", *supra* note 53 at 12; Faraday, "Profiting from the Precarious", *supra* note 52 at 33; Gesualdi Fecteau et al, *supra* note 52 at 98; UFCW, "2011 Report", *supra* note 65 at 18.

2. Registration and Licensing Schemes

As mentioned in the Introduction, the central feature of the relevant legislation in each province is the registration and/or licensing schemes set up for either or both of recruiters and employers of temporary foreign workers in the province. While there are variations across provinces in terms of both the applicability and content of these schemes, it remains a common and core feature of each legislative regime. This chapter analyzes and compares the registration and licensing regimes for recruiters and employers of temporary foreign workers under each relevant statute in BC, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia.

2.1 Recruiter Registration and Licensing

All provinces, except New Brunswick, require the registration and licensing of recruiters under the relevant legislation.

2.1.1 Defining a Recruiter

As set out in the Introduction, recruiters or recruitment agencies are typically defined broadly, including any actor or entity who, commonly for a fee, assists a temporary foreign worker in obtaining employment in the province.

In each of BC, Saskatchewan, Manitoba, and Nova Scotia, the relevant statute expressly defines recruiters and/or recruitment activities.

BC	"foreign worker recruiter" means a person who, for a fee or compensation, received directly or indirectly, provides recruitment services. ⁶⁸
SK	"foreign worker recruiter" means a person who, for a fee or compensation, provides recruitment services. ⁶⁹
MB	"foreign worker recruitment" means the following activities, whether or not they are provided for a fee: (a) finding one or more foreign workers for employment in Manitoba; (b) finding employment in Manitoba for one or more foreign workers. ⁷⁰
NS	"recruitment" means the following activities whether or not they are provided for a fee: i) finding or attempting to find an individual for employment ii) finding or attempting to find employment for an individual iii) assisting another person in doing i or ii iv) referring an individual to another person to do any of the activities described in i or ii. ⁷¹

⁶⁸ BC Act, *supra* note 10, s 1.

⁶⁹ SK Act, *supra* note 10, s 2(i).

⁷⁰ MB Act, *supra* note 11, s 1.

⁷¹ NS Code, *supra* note 11, s 2(oa).

Notably, neither Quebec nor New Brunswick set out statutory definitions for recruiters, though Quebec does confer authority on the government to define what constitutes a recruitment agency for temporary foreign workers.⁷²

Notably, most provinces also set out a number of exclusions. BC, Nova Scotia and Saskatchewan each exclude the following groups from the licensing and registration requirement: employers and their agents; members of the worker's family offering free assistance; governments and municipalities; universities and colleges;⁷³ and others who may be excluded by future regulations or orders.⁷⁴ Quebec similarly excludes public bodies from regulation as a recruiter including: government departments or school boards; municipalities, metropolitan communities, and mixed enterprise companies; and public transport companies.⁷⁵

BC also specifies that government actors may include officials of the "governing body of a first nation" and officials of foreign governments.⁷⁶ Nova Scotia also exempts those recruiting management or high-skilled workers as defined under ESDC's National Occupational Classification (NOC).⁷⁷ Manitoba's single exemption is similar to Nova Scotia's skill-based exemption; it exempts recruiters from licensing if they work for a registered employer in good standing who will pay foreign workers "at least two times the Manitoba industrial average wage."⁷⁸

2.1.2 Recruiter Application Requirements

In terms of application requirements, there are two dominant approaches to recruiter licensing across the provincial legislative regimes. Under the first approach, as in BC, Saskatchewan and Manitoba, application requirements have not been detailed significantly in legislation or regulations, rather being left to the discretion of the director responsible for administering the statute, and granting them broad powers to obtain relevant information. Under the second approach, as in Nova Scotia, application specifications and requirements are set out in regulation.

In provinces with a discretionary and flexible approach to applicant information, the statutory authority has broad powers to request and obtain information. For example, in BC, the *TFWPA* permits the director to mandate information they "reasonably require to assess the application."⁷⁹ Recruiters

⁷² QC Act, *supra* note 14, s 92(7)(1).

⁷³ This exemption was justified by Minister Bains in legislative debate as follows: "When you're talking about colleges and universities, when they are recruiting professors and lecturers, there is hardly any case of abuse or exploitation. That's why they're exempted": BC Hansard, *supra* note 1, (7 November 2018) at 6404.

⁷⁴ BC Act, *supra* note 10, ss 3(2)(a)-(b); NS Code, *supra* note 11, s 89H(2); SK Act, *supra* note 10, s 4(2)(a).

⁷⁵ QC Act, *supra* note 14, s 2.

⁷⁶ BC Act, *supra* note 10, s 3(2)(a)(iv). When asked about the foreign government exception and the possibility of "giving exemptions to certain countries with known human rights and worker rights abuses," Minister Bains answered that the intent was "to protect those workers who are here under, for example, a seasonal agricultural worker program" rather than other classes or less vulnerable workers: BC Hansard, *supra* note 1, (7 November, 2018) at 6404.

⁷⁷ General Labour Standards Code Regulation, NS Reg 298/90, s 2(13-14) [*NS Regulation*].

⁷⁸ MB Act, *supra* note 11, s 13.1(1-2).

⁷⁹ BC Act, *supra* note 10, s 5(1)(a)-(c).

must disclose the names and addresses of the recruiter's "partners, affiliates or agents" worldwide⁸⁰ and must notify the director if there is a material change in that information.⁸¹ The director has the power to investigate the "character, financial history and competence" of an applicant if necessary.⁸² Similarly, in Saskatchewan, the director has discretion to prescribe required information⁸³ and the power to "make inquiries into and conduct investigations of the character, financial history and competence of an applicant..."⁸⁴

Manitoba, like BC and Saskatchewan, permits the director to investigate the "character, financial history and competence" of the applicant⁸⁵ as well as the "conduct of the officers, directors or partners" of an applicant corporation in evaluating an application for licensing as a recruiter.⁸⁶ It grants the director information-seeking powers by requiring recruiters to provide signed consent authorizing the director to obtain information from third parties where the director has "reason to believe [they] can provide information or material relevant to determine whether the individual meets the requirements to be licensed."⁸⁷ It also requires the contact information of the recruiter's employer, including any of their employer's officers, directors or partners.⁸⁸ The director can require applicants to confirm information in their application by statutory declaration.⁸⁹

In contrast to other provinces, Nova Scotia's legislation leaves some of the information required for registration up to the director's discretion⁹⁰ but also provides a long list of requirements in regulations that are absent in other provinces. Applicants must provide, *inter alia*, i) all names and addresses they have conducted business under in the previous five years;⁹¹ ii) a "description of the nature and scope of the proposed foreign worker recruitment business," including which countries the applicant plans to recruit from and where the applicant will reside;⁹² iii) a list of the applicant's domestic and foreign recruiting-related bank accounts;⁹³ iv) the articles of incorporation and bylaws of any associated company;⁹⁴ and v) a statutory declaration outlining their compliance with the Code, their criminal

⁸⁰ BC Act, *supra* note 10, s 24.

⁸¹ *Ibid*, s 24(b).

⁸² *Ibid*, s 5(2).

⁸³ SK Act, *supra* note 10, s 6(1). This section provides that applications should include information prescribed by the Director.

⁸⁴ *Ibid*, s 6(2).

⁸⁵ MB Act, *supra* note 11, s 6(1).

⁸⁶ *Ibid*, s 6(2).

⁸⁷ MB Regulation, *supra* note 11, s 8(1)(c).

⁸⁸ *Ibid*, s 8(2).

⁸⁹ MB Act, *supra* note 11, s 6(4). Manitoba also gives the Director a more general power to require applicants to provide information and to request information or material from third parties, but this seems implied in the above: s 6(3)(a)-(b). The power to compel answers under oath exists in BC under the general enforcement powers: BC Act, *supra* note 10, s 42(1)(a).

⁹⁰ NS Code, *supra* note 11, s 89J(2).

⁹¹ NS Regulation, *supra* note 76, s 15(3)(d).

⁹² *Ibid*, s 15(3)(g).

⁹³ *Ibid*, s. 15(3)(h).

⁹⁴ *Ibid*, s. 15(3)(j)(iii).

record and prior civil liability, and any past denial or revocation of any licence “that required proof of good character.”⁹⁵

Recommendations

Require all recruiter applicants to include in their application:

- the names and addresses for all businesses they have conducted business under in the previous five years (as in Nova Scotia);
- the articles of incorporation and bylaws of any associated company (as in Nova Scotia) and for all corporations they have conducted business under in the previous five years; and,
- a statutory declaration outlining their compliance with the legislation, their criminal record and prior civil liability, and any past denial or revocation of any licence pursuant to the statute (as in Nova Scotia).

These specific requirements, in addition to existing requirements and discretionary powers to seek further information, will provide more extensive background information through which licence applications may be cross-checked. This, in turn, may guard against recalcitrant recruiters simply setting up a new business or corporation and identifying a related individual to act as the individual licensee.

2.1.3 Grounds for Refusing to Grant a Recruiter Licence

In each province, the relevant legislation sets out grounds upon which an application to be a licensed recruiter may be refused. In BC, the *TFWPA* lists five grounds for refusing to issue a licence including: prior non-compliance;⁹⁶ providing “incomplete, false, misleading or inaccurate information” in an application;⁹⁷ failure to qualify as a recruiter under the Act;⁹⁸ carrying on acts that are or would be in contravention of the Act;⁹⁹ and, where there are “reasonable grounds to believe that the applicant will not act in accordance with the law [...] or in the public interest.”¹⁰⁰ With the exception of prior non-compliance, the grounds for refusing a licence under Manitoba’s *WRAPA* mirror the grounds listed in BC’s *TFWPA*.¹⁰¹ Nova Scotia’s provisions for refusing a recruiter licence are strict and broad, encompassing not only the applicant but also “any person associated with the business applicant,” and allowing for refusal where “there are reasonable grounds to believe that the applicant will not act

⁹⁵ *Ibid*, s 15(3)(o).

⁹⁶ BC Act, *supra* note 10, s 6(2)(a).

⁹⁷ *Ibid*, s 6(2)(b).

⁹⁸ *Ibid*, s 6(2)(c).

⁹⁹ *Ibid*, s 6(2)(e). Except as regards acts that “will be in contravention” of the Act, this section is redundant. It was not included in the section addressing the amendment, suspension or cancellation of a licence: s 7(1)(b).

¹⁰⁰ *Ibid*, s 6(2)(d).

¹⁰¹ MB Act, *supra* note 11, s 9(1).

in accordance with law, or with integrity, honesty or in the public interest”¹⁰² or where the applicant’s business associates are carrying on acts that are or would be in contravention of the Act.¹⁰³

The grounds for refusal of a licence in Saskatchewan are identical to the grounds listed in the BC legislation.¹⁰⁴ However, Saskatchewan is unique in providing some legislative guidance on recruiter behaviour, both for the purposes of applications and subsequent conduct. Its Code of Conduct, found in the appendix to its Regulations,¹⁰⁵ expands on some of the prohibitions in the Act, stating that a recruiter may not “provide advice or create false expectations that would lead a foreign national to divest assets, quit his or her job or relocate without certainty of the right to work in Canada”¹⁰⁶ or “represent, either expressly or by implication, that services provided by the foreign worker recruiter are endorsed by the Government of Saskatchewan.”¹⁰⁷ Other sections require recruiters to restrict their services to their area of competence;¹⁰⁸ to maintain “strict confidence” over a foreign worker’s information;¹⁰⁹ to be forthright and timely in communications with other parties;¹¹⁰ to report any breaches of the Act;¹¹¹ and to report to employers and foreign workers if they have made any errors that could cause them prejudice.¹¹² The Code of Conduct thus substantially expands upon some of the broader provisions in its Act, including the bases upon which a recruiter’s licence application may be refused where there are reasonable grounds to believe they will not act in accordance with the law or in the public interest.

Quebec provides 14 grounds for refusing a licence, including:

- Outstanding sums payable under relevant labour statutes and regulations;
- Engagement, as found by a court, in discrimination, psychological harassment or reprisals as part of employment within the two years preceding the application;
- That the applicant has been an officer of an entity whose licence was suspended, revoked, or denied for renewal within the two years preceding the application;
- That the applicant has been found guilty within or outside of Canada of a penal or criminal offence in the five years preceding the application that, in the CNESST’s opinion, is connected with the activities of a licensed agency;

¹⁰² NS Code, *supra* note 11, s 89P(c).

¹⁰³ *Ibid*, s 89P(d)-(e).

¹⁰⁴ SK Act, *supra* note 10, s 8(2).

¹⁰⁵ The Foreign Worker Recruitment and Immigration Services Regulations, RRS c F-18.1 Reg 1, Appendix, s 2 [*SK Regulation*].

¹⁰⁶ *Ibid*, Appendix, s 4(b).

¹⁰⁷ *Ibid*, Appendix, s 4(c).

¹⁰⁸ *Ibid*, Appendix, ss 5(a), 7.

¹⁰⁹ *Ibid*, Appendix, s 5(c).

¹¹⁰ *Ibid*, Appendix, ss 5(b), 5(d), 5(e), 12.

¹¹¹ *Ibid*, Appendix, s 6.

¹¹² *Ibid*, Appendix, s 9.

- That the applicant has been placed under a receiving order pursuant to the *Bankruptcy and Insolvency Act*.¹¹³

In Quebec, once a licence has been refused, the applicant is not permitted to submit a new application within less than two years unless new facts are raised that are likely to warrant a different decision.¹¹⁴

Recommendation

Adopt a Code of Conduct (as in Saskatchewan) that provides detailed guidance for both applicants and statutory authorities evaluating applications, on expectations of behaviours, and which may influence adjudication of an application and constitute a refusal where there are reasonable grounds to believe the recruiter will not act lawfully or in the public interest.

2.1.4 Licensing Conditions and Requirements

In several provinces, the licensing scheme requires recruiters to post some form of security with the relevant statutory authority, which may be forfeited where there is a determination of non-compliance. BC requires the highest amount of security to be posted at \$20,000,¹¹⁵ whereas Nova Scotia and Manitoba require \$5,000 and \$10,000 respectively.¹¹⁶ There is no set amount of security required in Saskatchewan where the statutory authority retains discretion over whether to require security and in what amount.¹¹⁷ While “personnel placement agencies” in Quebec must provide security in the amount of \$15,000,¹¹⁸ applicants for a licence to operate a recruitment agency for temporary foreign workers are not required to post security.¹¹⁹

Provincial practices regarding license and certificates of registration for recruiters is fairly consistent. In BC, Manitoba and Saskatchewan, licences may only be issued to individuals.¹²⁰ The licences of business entities in Nova Scotia are tied to the business’ particular “officers, directors or partners” at the time of the application. If those individuals change, the business must cease providing recruitment services until the Director consents to a continuation of the licence in writing.¹²¹ In Quebec, a licence may be issued to a “person, partnership or other entity” but the licence application must be made by a natural person who acts as the respondent on behalf of the legal person, partnership or other entity

¹¹³ QC Regulation, *supra* note 12, ss 11(1)–(14). See, relatedly, QC Regulation, *supra* note 12, s 5.

¹¹⁴ *Ibid*, s 12.

¹¹⁵ Freedom of Information and Protection of Privacy Act, RSBC 1996, c 165, s 2(a) [*BC Regulation*].

¹¹⁶ NS Regulation, *supra* note 76, s 17(1); MB Regulation, *supra* note 11, s 9.

¹¹⁷ SK Act, *supra* note 10, ss 7(1)(a), 7(3)(a).

¹¹⁸ QC Regulation, *supra* note 12, s 27.

¹¹⁹ QC Regulation, *supra* note 12, s 10(4).

¹²⁰ BC Act, *supra* note 10, s 4; MB Act, *supra* note 11, s 3(2); SK Act, *supra* note 10, s 5. “Individuals” appears to include companies and partnerships in Manitoba as per MB Act, *supra* note 11, s 6(2): “If the applicant is a corporation or partnership, the Director may inquire into or investigate the conduct of the officers, Directors or partners of the applicant.”

¹²¹ NS Code, *supra* note 11, s 89O.

in communicating with the Commission.¹²² Licences in all licencing provinces are non-transferable.¹²³ The length of an active licence varies in duration across provinces, from one year in Manitoba,¹²⁴ to two years in Quebec,¹²⁵ to up to three years in BC and Nova Scotia,¹²⁶ to up to five years in Saskatchewan.¹²⁷

In all provinces, the relevant statutory authority has wide discretion to impose conditions on specific licences. The threshold for imposing such conditions may be slightly lower in BC than most other provinces: whereas directors in Manitoba, Nova Scotia and Saskatchewan must consider those conditions to be in the “public interest,” the director in BC may impose conditions where “the director considers appropriate.”¹²⁸ Similar to BC, the government in Quebec is conferred authority to “specify any condition” relating to the issuance of a licence through regulation.¹²⁹

Examples of conditions that may be attached to recruiter licences include: additional reporting requirements to the relevant statutory authority; additional reporting requirements to employers; additional requirements concerning contractual arrangements; requirements concerning the corporate registration of the agency; and, others.¹³⁰

¹²² QC Regulation, *supra* note 12, ss 5, 6.

¹²³ BC Act, *supra* note 10, s 6(4)(b); MB Act, *supra* note 11, s 7(3); NS Code, *supra* note 11, s 89N; SK Act, *supra* note 10, s 11; QC Regulation, *supra* note 12, s. 14

¹²⁴ MB Act, *supra* note 11, s 7(2)

¹²⁵ QC Regulation, *supra* note 12, s 14.

¹²⁶ BC Act, *supra* note 10, s 12(4)(a); NS Code, *supra* note 11, s 89M. The fact that these periods are “up to” three years permits the Director to impose a kind of probationary period on recruiters: [*Minister Bains*] “Based on what they find during their investigation, it could be only one year, if they have some issues with a recruiter. But next time they could say, based on the performance of that year, it could go a full three years. I think that’s the whole purpose behind it”: BC Hansard, (7 November 2018) at 6408.

¹²⁷ SK Act, *supra* note 10, s 10(2).

¹²⁸ BC Act, *supra* note 10, s 6(3); MB Act, *supra* note 11, s 7(1); NS Code, *supra* note 11, s 89L; SK Act, *supra* note 10, s 9(1).

¹²⁹ QC Act, *supra* note 14, s 92.7(3).

¹³⁰ “List of Licensed Recruiters” (updated 29 October 2019), online: *Nova Scotia Labour Standards* <novascotia.ca/lae/employmentrights/FW/LicensedRecruiters.asp>.

Recommendations

Require all licensed recruiters to post security in a substantial amount (as in BC: \$20,000). This provides a meaningful amount of security in the event of contravention and judgment against a recruiter and may also act as a deterrent for recruiters who would otherwise intend to contravene the statute.

Publish specific guidance, rules and examples of what conditions may attach to a licence, and when such conditions may be imposed on a recruiter. This will provide greater transparency for stakeholders, including applicants, statutory authorities, workers, employers and the public, in understanding when and how licences will be granted on a conditional basis, and what conditions may be used to ensure compliance under the statute.

2.1.5 Recruiter Registries

Each of the provinces that require registration and licensing of recruiters publicly posts a registry of licensed recruiters. Table 3 provides the number of recruiters listed on each provincial registry, current as of May 12, 2021.

Table 3: Recruiter licensing by province

	Number of recruiters in registry
Manitoba	26 ¹³¹
Saskatchewan	328 ¹³²
Nova Scotia	43 ¹³³
British Columbia	222 ¹³⁴
Quebec	277 ¹³⁵

The ease of locating relevant information regarding registered recruiters across provinces varied considerably, and in some provinces, was difficult to properly identify. This may pose obstacles for

¹³¹ "Foreign Worker Recruitment Licence Information" (14 April 2020) online: *Manitoba Employment Standards* <gov.mb.ca/labour/standards/doc/wrpa-license_info,factsheet.html>.

¹³² "Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities" (22 June 2021) online: *Saskatchewan Employment Standards* <saskatchewan.ca/residents/moving-to-saskatchewan/provide-immigration-services/immigration-consultant-and-foreign-worker-recruiter-licensing-and-responsibilities>.

¹³³ "List of Licensed Recruiters" (21 June 2021) online: *Nova Scotia Labour Standards* <novascotia.ca/lae/employmentrights/fw/licensedrecruiters.asp> [*Licensed NS Recruiters*].

¹³⁴ "Licensed Foreign Worker Recruiters" (22 June 2021) online: *British Columbia Employment Standards* <services.labour.gov.bc.ca/licensing/TFW_IssuancePublication> [*Licensed BC Recruiters*].

¹³⁵ "Trouver un titulaire de permis" (22 June 2021) online: *Commission des normes, de l'équité, de la santé et de la sécurité du travail*

effective and efficient use of these registries as a tool for temporary foreign workers and relevant organizations seeking to verify a recruiter's licensing and information within a particular province.

Information contained within each registry varies by province, as set out in Table 4. All provinces provide the name of the company holding the licence, and some contact information for that company. Most provinces also provide the expiry date for the licence, although BC is the only province to also indicate the date the licence takes effect. In addition, only BC and Nova Scotia provide information on whether conditions to the recruiter's licence have been imposed.

<servicesenligne.csst.qc.ca/employeurs/consulter_donnees_permis_exploitation_agence/Accueil.aspx> [*Licensed QC Recruiters*].

Table 4: Information included in registry by province

	BC ¹³⁶	MB ¹³⁷	NS ¹³⁸	QC ¹³⁹	SK ¹⁴⁰
Name of individual licence holder	✓	✓	✓		✓
Company of licence holder	✓	✓	✓	✓	✓
Contact details	✓ (Address, Phone number, Email)	✓ (Phone number, Email)	✓ (Phone number, Email)	✓ (Address)	✓ (Address, Phone number, Email)
Company website	✓ (Optionally)	✓ (Optionally)	✓ (Optionally)		✓
City of operation	✓			✓	✓
Effective date	✓				
Date of expiry	✓	✓	✓		✓
Date of last update				✓	✓
Licence number	✓			✓	✓
Status				✓	
NEQ (Quebec Enterprise Number)				✓	
Other names used by agency				✓	
Conditions on licence	✓ (Binary yes/no of whether conditions have been imposed)		✓ (Conditions listed in full)		

¹³⁶ Licensed BC Recruiters, *supra* note 134.

¹³⁷ Manitoba, Valid License Holders (Winnipeg: Employment Standards, 2021), online (pdf): Government of Manitoba <gov.mb.ca/labour/standards/asset_library/pdf/wrapa_valid_licensees.pdf>.

¹³⁸ Licensed NS Recruiters, *supra* note 133.

¹³⁹ Licensed QC Recruiters, *supra* note 135.

As noted in the above table, Nova Scotia posts the specific conditions attached to each recruiter's licence. These include:¹⁴¹

- Additional reporting requirements to the Labour Standards Division: e.g., “[b]efore entering into a recruitment contract with any client, this recruiter must provide the Labour Standards Division with: [information about the employer, employees sought, nature of the employment positions, proposed recruitment services, and any other recruitment activities]”;
- Additional reporting requirements to employers: e.g., “before entering into a recruitment contract with any employer, this recruiter must provide the employer with a copy of their licence and conditions, and the Labour Standards Division with a statutory declaration indicating that a copy of their licence and licence conditions have been provided to the employer”;
- Additional requirements for contracts with employers: e.g., “all recruitment contracts with employers must be in writing”; and/or,
- Requiring that the corporation under which the recruiter provides recruitment services is registered to do business in Nova Scotia, pursuant to the *Corporations Registration Act*.

In addition to maintaining a registry of licensed recruiters, Saskatchewan is the only province to also publicly post a list of recruiters whose licences have been suspended.¹⁴² The suspension list includes the names of the suspended licensees, business name, licence number, type of licence held, duration of the suspension, and the section of *FWRISA* that was breached. As of the most recent update on January 30, 2018, 2 suspended licences are listed. These two licence applications were both suspended under *FWRISA* section 8(2)(d): “having regard to the past conduct of the applicant, there are reasonable grounds to believe that the applicant will not act in accordance with the law, or with integrity, honesty or in the public interest, while carrying out the activities for which the licence is required.”¹⁴³

¹⁴⁰ “Immigration Consultant and Foreign Worker Recruiter Licensing and Responsibilities” (22 June 2021) online: *Saskatchewan Employment Standards* <saskatchewan.ca/residents/moving-to-saskatchewan/provide-immigration-services/immigration-consultant-and-foreign-worker-recruiter-licensing-and-responsibilities>.

¹⁴¹ Licensed NS Recruiters, *supra* note 133.

¹⁴² Government of Saskatchewan, Employment Standards, *The Foreign Worker and Recruitment Services Act: Suspended Licences* (Regina: Employment Standards, 2018) <saskatchewan.ca/residents/moving-to-saskatchewan/immigrating-to-saskatchewan/immigration-consultant-and-foreign-worker-recruiter-licensing-and-responsibilities>. See also Andrew Stevens, *Safe Passage: Migrant Worker Rights in Saskatchewan* (February 2019), online: Canadian Centre for Policy Alternatives <policyalternatives.ca/sites/default/files/uploads/publications/Saskatchewan%20Office/2019/02/Safe%20Passage.pdf> at 15 [Stevens].

¹⁴³ SK Act, *supra* note 10, s 8(2)(d).

Recommendations

Ensure recruiter registries are easy to locate and navigate for relevant information (as in BC). This will allow for such registries to be an effective and efficient tool for workers and relevant organizations to use to ascertain the status of a foreign worker recruiter in the province.

Publish a list of conditions attaching to specific licences publicly through the recruiter registries (as in NS). This provides greater transparency in relation to the licensing process and outcomes, and allows workers, employers and other stakeholders to have full information about the recruiter with whom they may be engaged. This, in turn, may foster greater compliance with the statute and provide more accurate data on contraventions.

Provide a public list of suspended and cancelled licences (as in Saskatchewan). This will further allow for registries to be an effective tool for workers and relevant organizations to use to determine the current status of a recruiter and any past non-compliance or other issues. As with the above recommendations, this may, in turn, foster greater confidence in and compliance with the legislation in each province.

2.2 Employer Registration

All provinces except Quebec require the registration of employers of temporary foreign workers under the relevant provincial statutory schemes.

2.2.1 Defining an Employer

While provinces varied in the specificity and precision with which an employer was defined for the purposes of the specific foreign worker legislation, the definition of an employer generally conforms, by implicit or explicit reference, to that as defined by general labour and employment legislation within each province.

Some provinces expressly incorporate such definition in the specific legislation, as in BC, where an employer is determined as having the same meaning as in the *Employment Standards Act*.¹⁴⁴ Provinces that include specific provisions regarding foreign worker recruitment and/or employment under general labour and employment legislation have pre-existing definitions of an employer set out in that legislation, as in Nova Scotia.¹⁴⁵ Saskatchewan is silent on the definition of an employer under the *FWRISA*, though implicit reference to general legislation could be easily adopted, if needed, for interpretive purposes.¹⁴⁶

Provinces also had some exclusions and exemptions, as with the definitions of recruiters examined earlier in this chapter. New Brunswick's statutory provisions create two exceptions in terms of

¹⁴⁴ BC Act, *supra* note 10, s 1. This approach is also adopted in Manitoba: MB Act, *supra* note 11, s 1.

¹⁴⁵ NS Code, *supra* note 11, s 2(e). See also NB Act, *supra* note 10, s 1; QC Act, *supra* note 14, s 1(7).

¹⁴⁶ SK Act, *supra* note 10, s 2(r); The Labour Standards Act, RSS 1978, c L-1, s 2(e).

application: first, employers who are designated as the Crown, a Crown corporation, or a Crown agency, do not have to register under the statute.¹⁴⁷ Second, employers who employ three or less agricultural workers “over a substantial period of the year” (6 months), aside from workers who are in a closer family relationship with the employer, are exempt from the *Employment Standards Act* as a whole, and thus from registration requirements under the relevant statutory rules for employers of temporary foreign workers.¹⁴⁸ Similarly, in Nova Scotia, employers exempt from the requirement to obtain a registration certificate include provincial government reporting entities, municipalities, and universities, as well as employers seeking “high skilled” labour under NOC O or A classifications, and employing international students.¹⁴⁹

2.2.2 Employer Registration Procedures and Certificates

In most provinces, application requirements for employers are less stringent than for recruiters. BC, Nova Scotia and Saskatchewan state that applications must contain information prescribed by regulation or by the director, though none of them have enacted regulations in this area to date.¹⁵⁰ The most detailed requirements are under Manitoba’s *WRAPA* where employers must register with Employment Standards before they proceed with an application to hire temporary foreign workers.¹⁵¹ Employers must register before applying for an LMIA from the Government of Canada or making a job offer through the Manitoba Provincial Nominee Program.¹⁵²

Like in Manitoba, employers in New Brunswick must register with Employment Standards before recruiting or engaging the services of another to recruit workers for employment.¹⁵³ In order to effect registration under the Act, employers must provide a detailed list of information including:¹⁵⁴

- The employer’s legal name, principal business activity, place of business, and contact details;
- With respect to the position of the prospective foreign worker:
 - the type of occupation,
 - the location of work,
 - whether it is subject to a collective agreement,
 - the educational and language requirements,
 - the wage rate, benefits, vacation time and the duration of the contract;
- With respect to the employment of foreign workers:
 - the program under which the workers will be employed,

¹⁴⁷ NB Act, *supra* note 10, s 38.9(3).

¹⁴⁸ *Ibid*, s 5.

¹⁴⁹ “Nova Scotia Foreign Worker Program Exemptions” (23 June 2021) online: *Department of Labour and Advanced Education* <novascotia.ca/lae/employmentrights/FW/nswfwprogexemptions.asp#qrecruiters>.

¹⁵⁰ BC Act, *supra* note 10, s 11(a)-(c); NS Code, *supra* note 11, s 89U; SK Act, *supra* note 10, s 15.

¹⁵¹ MB Act, *supra* note 11, s 11; Employment Standards, “Employer Registration Information” (16 January 2019), online: Government of Manitoba <gov.mb.ca/labour/standards/doc,wrpa-registration_info,factsheet.html> [*MB Employer Registration Information*].

¹⁵² MB Employer Registration Information, *supra* note 151

¹⁵³ NB Act, *supra* note 10, s 38.9(2).

¹⁵⁴ *Ibid*, s 38.9(4).

- whether the employer engages a recruiter,
- the number of foreign workers to be employed,
- the country of origin of any foreign workers to be employed,
- whether these workers are already in Canada,
- whether the employer will pay their costs of transportation,
- whether the employer has previously engaged foreign workers,
- whether accommodation will be provided and for what amount, and
- whether the employer has attempted to employ Canadian citizens for the position.

New Brunswick's detailed application process directly supports its primary objective in enacting legislation to collect data on the existence and use of migrant labour in the province, and for provincial programming decisions.

Provinces treat employer registration certificates similarly to recruiter licences. Like recruiter licences, certificates of registration in BC and Saskatchewan are non-transferable¹⁵⁵, and are subject to conditions the director may impose at their discretion.¹⁵⁶ Certificates in the two provinces are valid for the same periods of up to three years¹⁵⁷ and five years respectively.¹⁵⁸ While Manitoba specifies that certificates of registration are only valid for up to a year,¹⁵⁹ it is silent on transferability and conditions. Nova Scotia currently says only that registration will be valid "for the period stated in the registration."¹⁶⁰ In New Brunswick, once an employer has completed their registration (effected through submitting their application), the registration remains valid for one calendar year, and the employer must provide an update of the information each year in order to renew their registration.¹⁶¹

¹⁵⁵ BC Act, *supra* note 10, s 12(4)(b); SK Act, *supra* note 10, s 19.

¹⁵⁶ BC Act, *supra* note 10, s 12(3); SK Act, *supra* note 10, s 17(1).

¹⁵⁷ BC Act, *supra* note 10, s 12(4)(a).

¹⁵⁸ SK Act, *supra* note 10, s 18(2).

¹⁵⁹ MB Regulation, *supra* note 11, s 14(2).

¹⁶⁰ NS Code, *supra* note 11, s 89V(2).

¹⁶¹ NB Act, *supra* note 10, s 38.9(5).

Recommendations

Require employers to register under the provincial statutory regime before engaging in the federal application process to recruit and hire temporary foreign workers (as in Manitoba and New Brunswick).

Require employers to provide detailed information on their initial registration application (as in New Brunswick) to facilitate better data collection concerning temporary foreign workers in the province.

Require employers, upon hiring a temporary foreign worker, to submit to the relevant authority a worker-signed employment contract and any accompanying documents. This will provide important documentation for both auditing and investigative purposes in light of known abuses and contractual breaches temporary foreign workers face in Canada.

2.2.3 Grounds for Refusing an Employer Registration Application

Grounds for refusing an employer's registration application largely mirror those for refusing a recruiter's licensing application, as discussed earlier. For example, in BC, the legislation sets out the same grounds for refusal of employer registration applications as recruiter licence applications with the addition of a ground for an employer's non-compliance with any federal approvals permitting them to recruit temporary foreign workers¹⁶² or with "applicable labour legislation."¹⁶³ This language similarly appears Saskatchewan's legislation.¹⁶⁴ In addition, BC, Saskatchewan and Manitoba each include a "catch all" ground for refusing employer applications where there are reasonable grounds to believe the employer will engage in unlawful activity or not act in the public interest. Manitoba also adds a second related ground to expand application of this kind of "catch all" provision to cover the employer as well as any employees acting on their behalf in relation to temporary foreign worker recruitment.¹⁶⁵

Notably, Nova Scotia does not have a "catch all" provision to allow for refusal of employer applications on general grounds.¹⁶⁶ The *Labour Standards Code* sets out a number of enumerated grounds upon which the director may refuse an employer's registration application and which largely mirror available grounds for refusing a recruiter licence, including:¹⁶⁷

- a) the employer provides incomplete, false, misleading or inaccurate information in support of the application;

¹⁶² BC Act, *supra* note 10, s 12(2)(d).

¹⁶³ *Ibid*, s 12(2)(e).

¹⁶⁴ SK Act, *supra* note 10, s. 16(2). This includes The Saskatchewan Employment Act among others: The Saskatchewan Employment Act, SS 2013, c S-15.1, s 16(2)(e).

¹⁶⁵ MB Act, *supra* note 11, s 12(1)(d).

¹⁶⁶ NS Code, *supra* note 11, s 89W.

¹⁶⁷ *Ibid*, s 89(w).

- b) the employer is carrying on activities that are in contravention of this Act or the regulations or will be in contravention if the registration is granted;
- c) the employer has previously contravened the Act or the regulations;
- d) the employer has been found to be in breach of the Occupational Health and Safety Act, by final order or decision made pursuant to that Act, or has been convicted of an offence under the Act; or
- e) an individual who will be engaged in foreign worker recruitment on behalf of the employer does not hold a required licence under subsection 89H(1).

Unlike the other provinces, and in line with the primary objective of their legislation as information-gathering rather than law-enforcing, New Brunswick does not set out any grounds for refusing an application, nor do the statutory provisions contemplate administrative penalties, such as suspension or revocation of a registration, or the imposition of terms and conditions upon registration.

Recommendation

Expand the grounds on which an employer's application can be refused or registration revoked to include employees and/or agents acting on behalf of an employer (as in Manitoba).

2.2.4 Employer Registration Registries

Each province that requires employers of temporary foreign workers to register also maintains a list of registered employers, though only BC publishes a list of registered employers.¹⁶⁸ BC is the only province to also publish data concerning the number of registered employers in the province, which, as of June 6, 2020, is 4038.¹⁶⁹ However, Manitoba and Quebec each publicize the name and information of employers who contravene the statute. Manitoba publishes a list of employers who have been issued administrative penalty orders which are fines that employers who repeatedly contravene employment laws are ordered to pay.¹⁷⁰ Employment Standards has published a total of 25 administrative penalties from the years 2017-2018, 2018-2019, and 2019-2020.¹⁷¹ However, all three of these lists only include employers who fail to comply with *The Employment Standards Code* or *The Construction Industry Wages Act*.¹⁷² No employers have been listed specifically for contraventions under *WRAPA*.

¹⁶⁸ "Active Employer Registrations" (last accessed 28 June 2021) online: *Government of BC* <services.labour.gov.bc.ca/TFWRRegistrationSearch>.

¹⁶⁹ *Ibid*

¹⁷⁰ *Ibid*.

¹⁷¹ *Ibid*.

¹⁷² Manitoba, Employment Standards, *Administrative Penalty Orders (2017-2018)* (Winnipeg: Employment Standards, 2018) <gov.mb.ca/labour/standards/asset_library/pdf/ap_archived_2017-2018.pdf> accessed 23 June 2021; Manitoba, Employment Standards, *Administrative Penalty Orders (2018-2019)* (Winnipeg: Employment Standards, 2019) <gov.mb.ca/labour/standards/asset_library/pdf/ap_archived_2018-2019.pdf> accessed 23 June 2021; Manitoba, Employment Standards, *Administrative Penalty Orders (2019-2020)* (Winnipeg: Employment

Quebec, despite not requiring employers to register under its statutory provisions, does maintain a public list of employers in contravention of the Act. As of January 1, 2020, when the provincial legislation came into force by regulation, two employers have been reported by government of Quebec as being in contravention of the Act; however, none of the published contraventions have been specific to provisions targeted at temporary foreign workers.¹⁷³

Recommendations

Publicize a list of employers who have contravened the legislation (as in Manitoba and Quebec). This may function as a deterrent for employers and related actors to engage in unlawful behaviour.

Consider making publicly available a list of employers who employ temporary foreign workers in the province. This would provide greater transparency and increase ease of access for worker advocates and support groups, researchers, and other external actors. This measure would need to be carefully balanced against relevant privacy laws and interests.

In furtherance of the above recommendations, ensure that databases and information systems recording relevant data, such as employer registrations, are up-to-date and facilitate use, such as the ability to search, summarize, and select particular entries, and generate lists of recorded data.

Standards, 2020) <gov.mb.ca/labour/standards/asset_library/pdf/ap_archived_2019-2020.pdf> accessed 23 June 2021.

¹⁷³ "Listes des Employeurs Contrevenant à la LNT" (23 June 2021), online: CNESST <cnesst.gouv.qc.ca/en/salle-presse/employeur-contrevenant>.

3. Obligations and Prohibitions

In addition to requiring licensing and registration of recruiters and employers, each legislative regime governing the recruitment and employment of temporary foreign workers in relevant provinces in Canada contains some substantive content about both the obligations of those actors and prohibited activity or conduct. This chapter analyzes and compares the substantive content ascribed to relevant actors under each statutory regime in BC, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia.

3.1 Prohibited Conduct and Activities

3.1.1 Prohibition on Recruitment Fees

Along with requiring the registration and licensing of recruiters, each legislative regime also prohibits the direct or indirect charging of recruitment fees to temporary foreign workers.¹⁷⁴ This prohibition includes indirectly collecting fees from workers through reducing their pay or benefits¹⁷⁵ as well as a prohibition on directly charging recruitment fees by a recruiter. The provinces are uniform in this regard, ensuring that recruiters may only charge employers for their services, and that employers may not recoup those costs through deductions to workers' pay, as noted above. However, Manitoba creates an exception that where a foreign worker gives an employer just cause for termination, the employer may sue the foreign worker to recover "the employer's reasonable costs" of recruitment.¹⁷⁶

¹⁷⁴ BC Act, *supra* note 10, ss 21(1), 21(2), 21(5); MB Act, *supra* note 11, ss 15(4), 16(1)(a); NS Code, *supra* note 11, s 89B(1)-(2); SK Act, *supra* note 10, ss 23(1), 23(5); NB Act, *supra* note 10, s 38.91(2); QC Regulation, *supra* note 12, ss 25(1)-(2).

¹⁷⁵ BC Act, *supra* note 10, s 21(5); MB Act, *supra* note 11, s 17; NS Code, *supra* note 11, ss 89E, 89F; SK Act, *supra* note 10, s 23(4). Nova Scotia's regulations specify that this prohibition does not apply if a reduction in pay is attributable to a change in federal or provincial law; a change to a collective agreement; measures needed to respond to a "dramatic and unforeseeable or unavoidable change in economic conditions"; or good faith errors that result in a disadvantage to the worker, so long as they are compensated for the error: NS Regulation, *supra* note 76, s 2(12).

¹⁷⁶ MB Act, *supra* note 11, s 16(2). Specific conduct enumerated in the Act includes failing to report to work; "wilful misconduct, disobedience or wilful neglect of duty"; violence; dishonesty; and failing to "complete substantially all of his or her term of employment with the employer."

3.1.2 Other Prohibited Conduct

Table 5: Prohibited employer and recruiter conduct by province

Note: ■ represents a prohibition applying to an employer; ● represents a prohibition applying to a recruiter

	BC	SK	MB	QB	NS	NB
Charging or recouping recruitment fees from workers	■●	■●	■●	■●	■●	■●
Producing or distributing “false or misleading information” about recruiting, immigration, employment, housing or Canadian laws	■●	■●				■●
Seizing a foreign worker’s passport or other official documents	■●	■●		■●	■●	■●
Misrepresenting employment opportunities, especially with respect to material terms of such employment	■●	■●				■●
Threatening a worker with deportation or other illegal acts for which there is no lawful cause	■●	■●				■●
Taking reprisals against a worker for initiating or participating in enforcement actions	■●	■●				
Contacting a foreign worker or their family or friends after being requested not to do so by the worker		■●				
Taking “unfair advantage of a foreign national’s trust” or exploiting a foreign national’s “fear or lack of experience or knowledge”		■●				
Reducing wages or otherwise diminishing the benefits or terms and conditions of employment agreed upon at the time of recruitment			■		■	■
Prohibiting a worker to leave accommodation where it is provided by an employer in favour of other housing						■
Requiring a worker to engage with specific immigration consultants		■				■

In addition to prohibiting the charging of recruitment fees, legislation in most provinces contains additional prohibited activities aimed at protecting and securing temporary foreign workers. While some provinces reference general prohibitions under employment standards legislation, others have enunciated specific prohibitions and protections that may have unique application to or impact for temporary foreign workers. For example, in BC, prohibited conduct includes:

- a) producing or distributing “false or misleading information” about recruiting, immigration, employment, housing or Canadian laws;¹⁷⁷

¹⁷⁷ BC Act, *supra* note 10, s 20(a).

- b) seizing a foreign worker's passport or other official documents;¹⁷⁸
- c) "misrepresenting employment opportunities," especially with respect to material terms of such employment;¹⁷⁹
- d) threatening a foreign worker with deportation or other illegal acts;¹⁸⁰ and
- e) taking reprisals against a worker for initiating or participating in enforcement actions.¹⁸¹

Saskatchewan also prohibits all of the above conduct, in addition to prohibiting recruiters and employers from "contact[ing] a foreign national or a foreign national's family or friends after being requested not to do so by the foreign national"¹⁸² and "tak[ing] unfair advantage of a foreign national's trust or exploit a foreign national's fear or lack of experience or knowledge."¹⁸³

Similar to the above, Quebec, Nova Scotia and New Brunswick also prohibit possessing temporary foreign workers' documents, such as a passport or work permit.¹⁸⁴ This conduct is prohibited in most jurisdictions and has specifically been noted as a mechanism to exert control over temporary foreign workers, creating and enhancing the precarity of their status in Canada.¹⁸⁵ Moreover, by including this in provincial legislation, it provides jurisdiction to the provincial authorities to enforce this, despite the fact that it is already prohibited under federal immigration law.

Like in BC and Saskatchewan, New Brunswick also prohibits employers and persons recruiting on behalf of an employer from misrepresenting any details of the employment opportunity offered to a temporary foreign worker¹⁸⁶ and providing false or misleading information to a temporary foreign worker about employer and employee rights and responsibilities.¹⁸⁷ Moreover, as in BC and Saskatchewan, New Brunswick prohibits employers from threatening a foreign worker with deportation.¹⁸⁸ New Brunswick further prohibits employers from reducing wages or otherwise diminishing the benefits or terms and conditions of employment agreed upon at the time of recruitment¹⁸⁹ and from prohibiting a worker to leave accommodation, where it is provided by an employer, in favour of other housing.¹⁹⁰

¹⁷⁸ *Ibid*, s 20(b).

¹⁷⁹ *Ibid*, s 20(c).

¹⁸⁰ *Ibid*, s 20(d).

¹⁸¹ *Ibid*, s 20(e). This subsection is duplicative of s. 41(1)-(2) in the same Act.

¹⁸² SK Act, *supra* note 10, s 22(e).

¹⁸³ *Ibid*, s 22(g).

¹⁸⁴ QC Regulation, *supra* note 12, ss 25(1)-(2); NB Act, *supra* note 10, s 28.91(6); NS Code, *supra* note 11, s 89G(1)-(3).

¹⁸⁵ Faraday, "Made in Canada", *supra* note 36 at 66; Made in Canada 66; Faraday, "Profiting from the Precarious", *supra* note 52 at 79.

¹⁸⁶ NB Act, *supra* note 10, s 28.91(4).

¹⁸⁷ *Ibid*, s 28.91(5).

¹⁸⁸ *Ibid*, s 28.91(8).

¹⁸⁹ *Ibid*, s 28.91(3).

¹⁹⁰ *Ibid*, s 28.91(7).

Employers in New Brunswick and Saskatchewan are further prohibited from requiring temporary foreign workers to engage with specific immigration consultants.¹⁹¹ Again, this minimizes the possibility of abuse arising from an employer seeking specific or special arrangements with a particular immigration consultant, instead allowing workers the option of choosing what parties to engage in their recruitment and immigration process.

Unlike the above approaches, each of Nova Scotia, Manitoba and Quebec include minimal prohibitions in their legislation. Each prohibits charging recruitment fees and retaining passports and related documents, as noted above. Nova Scotia also prohibits an employer from altering the agreed upon wages, conditions of work and benefits “that the employer undertook to provide as a result of participating in the recruitment of a foreign worker.”¹⁹² A similar provision prohibiting an employer from reducing a foreign worker’s wages or working conditions exists under Manitoba’s legislation.¹⁹³ Manitoba’s legislation also prohibits charging a recruitment fee, and expressly references that prohibitions applying to all employers under the provincial *Employment Standards Code* similarly apply to employers of temporary foreign workers, and authorizes the director to exercise powers under that statute.¹⁹⁴ In Quebec, recruitment agencies and employers are prohibited from charging fees¹⁹⁵ and requiring a worker to entrust an employer with personal documents like a passport.¹⁹⁶ Moreover, as in other provinces, employers are subject to general labour and employment laws and obligations set out in existing provincial legislation. In Quebec, this includes an employer working with a recruitment agency ensuring that the agency has a valid licence under the Regulation.¹⁹⁷

Recommendation

Prohibit specific conduct known to impact temporary foreign workers’ vulnerability in relation to their recruitment and employment in Canada, including retention of passports and identity documents, providing false or misleading information, and requiring a worker to use employer-approved or specified contractors for recruitment and immigration arrangements.

¹⁹¹ SK Act, *supra* note 10, s 29; NB Act, *supra* note 10, s 28.91(1).

¹⁹² NS Code, *supra* note 11, s 89E.

¹⁹³ MB Act, *supra* note 11, s17.

¹⁹⁴ *Ibid*, s 19(2).

¹⁹⁵ QC Act, *supra* note 14, s 92(12); QC Regulation, *supra* note 12, s 25(2).

¹⁹⁶ QC Act, *supra* note 14, s 92(11); QC Regulation, *supra* note 12, s 25(1).

¹⁹⁷ QC Act, *supra* note 14, s 92.6.

3.2 Positive Obligations

3.2.1 Disclosure Requirements

Table 6: Disclosure requirements by province

Note: ■ represents requirements applying to an employer; ● represents requirements applying to a recruiter

	BC	SK	QB
Disclose any compensation received for their referrals to temporary foreign workers	●	●	
Disclose and receive consent from both parties if a recruiter is working for both an employer and a worker simultaneously	●	●	
Provide temporary foreign workers with information about their rights	■●		■
Disclose to regulatory body the arrival date of the worker, the duration of their contract, and, if the worker's departure date does not coincide with the end of their contract, the date of and reasons for departure			●
Notify CNESST without delay of any material change that would be likely to affect the validity of the agency's licence			●
Reply within the legislated time frames to any requests from the CNESST			●
Display a clearly legible copy of the agency licence in a conspicuous place in the business			●
Include the agency's licence number on all advertising including invoices, contracts, and websites			●

Some jurisdictions have adopted an approach requiring active obligation to inform temporary foreign workers about their rights, rather than framing this issue as a more limited prohibition on providing misleading information (as in New Brunswick). BC's approach on disclosure appears strongest amongst the existing legislative regimes. In BC, recruiters must disclose any compensation they will receive for their referrals to temporary foreign workers,¹⁹⁸ and where they are providing immigration services, whether they are simultaneously working on behalf of a prospective employer.¹⁹⁹ Moreover, if a recruiter is working for both the worker and employer, they must obtain written consent from each before engaging in the work.²⁰⁰ Finally, in BC, recruiters and employers must provide temporary foreign workers with information about their rights, as specified by the director.²⁰¹

¹⁹⁸ BC Act, *supra* note 10, s 22.

¹⁹⁹ *Ibid*, s 23(a).

²⁰⁰ *Ibid*, s 23(b).

²⁰¹ *Ibid*, s 26. This was to be combined with a public awareness campaign and an informational website: BC Hansard, (7 November 2018) at 6403. Though there is no legal requirement that the materials be in the

Saskatchewan similarly requires recruiters and immigration consultants to disclose any compensation they receive for referrals to foreign workers²⁰² and has an identical restriction on simultaneously serving a foreign worker and a prospective employer without the written consent of each party.²⁰³ As previously discussed, Saskatchewan further sets out a Code of Conduct for recruiters that includes a number of obligations.²⁰⁴ However, Saskatchewan does not require recruiters or employers to furnish foreign workers with additional information about their rights.

Quebec's new legislation similarly creates obligations on recruiters to inform temporary foreign workers of their rights. First, recruiter agencies are required to provide workers with a document describing the working conditions of their assignment, including the wage offered and the contact information of their employer.²⁰⁵ Second, recruitment agencies must provide the worker with information documents available from CNESST concerning their rights and the employer's obligations in respect of labour standards.²⁰⁶ As with the approach in BC, providing workers with specific information on rights and obligations attending employment in the province addresses the long-standing concern that temporary foreign workers are abused and exploited in Canada, in part, because they do not know their rights or an employer's obligations.²⁰⁷

Quebec's legislation further creates disclosure obligations for employers and recruiters vis-à-vis CNESST. First, employers who hire a temporary foreign worker must disclose relevant information to CNESST promptly, including: the arrival date of the worker; the duration of their contract; and, if the worker's departure date does not coincide with the end of their contract, the date of and reasons for departure.²⁰⁸ In order to fulfill this obligation, the employer must file a "Déclaration d'embauche de travailleurs étrangers temporaires" with the CNESST. This mirrors some registration requirements in other provinces canvassed in the previous chapter. However, because Quebec does not require "registration" of employers along similar lines as other provincial regimes, this is more precisely considered as a disclosure obligation.

Quebec's legislation also includes some ongoing disclosure obligations for recruitment agencies vis-à-vis the regulatory body, CNESST. Specifically, all agency licence holders must:

- Notify the CNESST without delay of any material change that would be likely to affect the validity of the agency's licence;
- Reply within the legislated time frames to any requests from the CNESST;
- Display a clearly legible copy of the agency licence in a conspicuous place in the business; and

language spoken by the workers, the intent was to provide multi-lingual information on the website: BC Hansard, (7 November 2018) at 6411.

²⁰² SK Act, *supra* note 10, s 24.

²⁰³ SK Act, *supra* note 10, s 25(1).

²⁰⁴ SK Regulation, *supra* note 105, Appendix, s (1)-(12).

²⁰⁵ QC Regulation, *supra* note 12, s 24(1)(a).

²⁰⁶ QC Regulation, *supra* note 12, s 24(1)(b).

²⁰⁷ Faraday, "Made in Canada," *supra* note 36 at 46; Hastie, *supra* note 43 at 29.

²⁰⁸ QC Act, *supra* note 14, s 92.9.

- Include the agency's licence number on all advertising including invoices, contracts, and websites.²⁰⁹

In addition, recruitment agencies in Quebec have a specific obligation to ensure that any person who is advising, assisting or representing an employee (client) using its services for an application for immigration is properly licensed by the provincial government as an immigration consultant.²¹⁰

Recommendation

Ensure that both employers and recruiters are obliged to communicate information to temporary foreign workers regarding their rights and obligations as workers in the province.

Ensure that communication materials are created by relevant provincial bodies in consultation with experts, and available in multiple languages, especially first languages of temporary foreign worker populations.

Require employers to report to the relevant provincial authority, upon hiring a worker, the dates of arrival and anticipated departure and a copy of the employment contract. Require employers to file a notice at the end of a worker's contract. These filings will allow for greater data collection and auditing of all employers of temporary foreign workers under the province's jurisdiction.

3.2.2 Contractual Requirements

Each of BC and Saskatchewan have incorporated specific contractual requirements under their legislative regimes regulating the recruitment and employment of temporary foreign workers in the province. Specifically, BC and Saskatchewan have eliminated the ability of recruiters and employers to enter oral contracts with foreign workers.²¹¹ Written contracts in BC and Saskatchewan must be "written in clear and unambiguous language,"²¹² with clear fees and prices for chargeable services and any other terms prescribed by the director or by regulation.²¹³

While BC has not yet enacted any regulations on this point, Saskatchewan's regulations require recruiting contracts to state that there is a prohibition on charging recruitment fees to foreign workers and to list the names and contact information of any employee or agent who may work on the recruiter's behalf.²¹⁴ Saskatchewan's legislation also includes: a prohibition on forum selection outside

²⁰⁹ QC Regulation, *supra* note 12, ss 21(1)-(4).

²¹⁰ QC Regulation, *supra* note 12, s 24.

²¹¹ BC Act, *supra* note 10, s 27(a); SK Act, *supra* note 10, s 27(1)(a).

²¹² BC Act, *supra* note 10, s 27(b); SK Act, *supra* note 10, s 27(1)(b).

²¹³ BC Act, *supra* note 10, s 27(f)-(g); SK Act, *supra* note 10, s 27(1). BC has not yet introduced further requirements in regulation.

²¹⁴ SK Regulation, *supra* note 105, s 7.

of Saskatchewan;²¹⁵ application of the *contra proferentem* principle where any terms are ambiguous;²¹⁶ and, a prohibition on enforcing recruitment contracts made without the requisite licence or registration.²¹⁷

Contractual provisions in other provincial legislation are limited to voiding specific terms or contracts that contravene prohibitions or “protective measures” in their respective acts.²¹⁸ This is duplicative of the common law which refuses to enforce illegal provisions in contracts.²¹⁹

No province requires contracts to be provided in multiple languages or a language that the worker holds sufficient fluency in. This approach is adopted at the federal level for SAWP workers as the SAWP template contract is available in English, French and Spanish.²²⁰ Requiring contracts to be provided in a language that the worker will understand, and making template contracts available in multiple languages, will better ensure that the contractual provisions, rights and prohibitions attending the employment relationship will be understood by the worker, contributing to greater rights access for workers in each province.

Recommendation

Craft a template contract that clearly sets out all terms and conditions of employment, including those specified under relevant provincial legislation, such as the prohibition on charging or recouping recruitment fees and the requirement to communicate a worker’s rights and obligations under relevant laws.

Publish the template contract in multiple languages to facilitate greater understanding and use for workers for whom English is not the first language.

Require employers to provide a contract in a language that the worker has sufficient fluency and provide accessible translation supports to facilitate this.

Require all recruiters and employers to file copies of their contracts with the provincial authority to facilitate greater data collection and support auditing or other investigative activities.

²¹⁵ SK Act, *supra* note 10, s 28.

²¹⁶ SK Act, *supra* note 10, s 27(3).

²¹⁷ *Ibid*, s 45.

²¹⁸ MB Act, *supra* note 11, s 15(6); NS Code, *supra* note 11, ss 89D, 89E(2).

²¹⁹ See, e.g., *Niedermeyer v. Charlton*, 2014 BCCA 165 at paras 50-51.

²²⁰ “Hire a temporary worker through the Seasonal Agricultural Worker Program: Program requirements” (15 January 2021) online: Employment and Social Development Canada <canada.ca/en/employment-social-development/services/foreign-workers/agricultural/seasonal-agricultural/requirements.html>.

3.3 Record Keeping

Table 7: Record retention requirements by province

Note: ■ represents requirements applying to an employer; ● represents requirements applying to a recruiter

	BC	SK	MB	QB	NS	NB
Records of “dealings respecting foreign workers” that are made available to the director for inspection	■●	■●	■●	■●	■●	■●
Contracts entered with foreign workers and/or employers (including the names and addresses of workers, description of services rendered, and employers who were referred or placed with the worker)	●	●	●	●		
A list of any foreign workers that have been recruited			●			
Any fees received for recruitment services	●	●		●		
Expenses incurred in providing recruitment or immigration services and reasons for any payments they received from employers and workers		●				
Any applications submitted regarding recruitment or immigration services and copies of any decisions rendered over applications		●				
Any correspondence they engaged in respecting recruitment or immigration services		●				
Job offers made to foreign workers and labour market opinions received from the federal government under <i>Immigration and Refugee Protection Act</i> (IRPA) regulations		■				
Complete financial records			■●		■●	

Recruiters and employers in each province must maintain records of their dealings respecting foreign workers and make those records available to the director for inspection.²²¹ Record-keeping requirements vary across provinces.

In BC, recruiters must retain their contracts with foreign workers, the names and addresses of foreign workers they work with, a description of the services they rendered, the employers they referred foreign workers to or placed foreign workers with, and any fees they received for recruitment services.²²² Employers of foreign workers in BC must retain their contracts with recruiters, any fees they paid recruiters, the name, address and work location of foreign workers they hire, federal

²²¹ BC Act, *supra* note 10, s 28(3)(b); MB Act, *supra* note 11, s 18(2); NS Code, *supra* note 11, s 16(a)(ii); SK Act, *supra* note 10, s 31(2)(b).

²²² BC Act, *supra* note 10, s 28(1).

approvals for recruiting foreign workers, and payroll records.²²³ Both recruiters and employers must retain these records for at least four years from the date of creation.²²⁴ These requirements are relatively detailed but are less extensive than the requirements in Saskatchewan.

In addition to the above, recruiters in Saskatchewan must retain records of expenses they incurred in providing recruitment or immigration services, reasons for any payments they received from employers and foreign nationals, any applications they submitted regarding recruitment or immigration services, copies of any decisions rendered over their applications, and any correspondence they engaged in respecting recruitment or immigration services.²²⁵ The requirement to keep records of reasons for payments and correspondence does not apply to employers. However, in addition to the BC requirements, employers in Saskatchewan must also keep records of job offers they made to foreign workers and labour market opinions they received from the federal government under *IRPA* regulations.²²⁶ Saskatchewan adds that where recruiters or employers maintain records in electronic format, they must be “easily convertible into a readable format”²²⁷ and any computers or databases hosting them should be made accessible to the director upon request.²²⁸ Both employers and recruiters are required to retain required records for at least five years after the date upon which they were created.²²⁹

Manitoba and Nova Scotia both require recruiters and employers to keep “complete and accurate financial records” for at least three years²³⁰ with Manitoba including recruitment contracts and a list of foreign workers they have recruited for at least three years in the record-keeping obligations for recruiters under the regulations.²³¹ General employment standards legislation in New Brunswick requires all employers to keep complete and accurate records of all employees for at least 36 months.²³² Where an employer fails to maintain records in accordance with the *Employment Standards Act*, the evidentiary burden will shift to that employer to disprove any claims made by an employee before the director or the Labour and Employment Board.²³³

In Quebec, employers must record the information they are obliged to disclose to CNESST (see above, Chapter 3.2) in the registration system kept by the employer in accordance with the *Regulation respecting a registration system or the keeping of a register* for a period of three years, as prescribed by that Regulation.²³⁴ As a further measure of protection, temporary foreign worker recruitment agencies must ensure that they meet certain recording keeping standards. In particular, licence holders must

²²³ *Ibid*, s 28(2).

²²⁴ *Ibid*, s 28(3)(a).

²²⁵ SK Regulation, *supra* note 105, s 8(1).

²²⁶ *Ibid*, s 8(2).

²²⁷ SK Act, *supra* note 10, s 31(3)(a).

²²⁸ *Ibid*, s 31(4).

²²⁹ *Ibid*, s 31(2)(a).

²³⁰ MB Act, *supra* note 11, s 18(1)(a); NS Code, *supra* note 11, s 15(2)(a).

²³¹ MB Regulation, *supra* note 11, ss 15(1)(c), 14(1)(c); MB Act, *supra* note 11, s 18(1)(a).

²³² NB Act, *supra* note 10, s 60(1).

²³³ *Ibid*, s 60(4).

²³⁴ QC Regulation, *supra* note 12, s 2.

keep, for at least six years, the contracts entered into with employers and related invoices, and, for each foreign worker hired, the name and contact details of the worker and the information on the date of hire by an employer.²³⁵

Recommendations

In addition to requirements for recruiters to retain records concerning their services and clients, require recruiters to retain records of expenses and payments concerning their services for temporary foreign workers and employers of temporary foreign workers, including description and explanation for expenses and payments.

Require recruiters to retain copies of any applications submitted on behalf of an employer of temporary foreign workers or a worker, any decisions rendered in respect of an application, and any correspondence concerning an application made in the course of their services.

Require employers to retain records of all LMIA applications, contracts with temporary foreign workers, and payroll accounts for temporary foreign workers.

Require both employers and recruiters to ensure all electronic records are easily convertible to a readable format and available for inspection where requested pursuant to the relevant statute.

²³⁵ QC Regulation, *supra* note 12, ss 24(2)–(3).

4. Investigations

Investigations are a fundamental and necessary mechanism to ensure compliance with and effectiveness of legislative regimes to protect temporary foreign workers through registration and licensing of recruiters and employers. Each province has set out relevant authority and measures for investigating compliance under their respective regimes. These may include both proactive investigations and audits as well as complaints-based investigations. Further, some provinces have included provisions relating to procedural mechanisms to facilitate investigations, such as in relation to information sharing and inter-jurisdictional cooperation. This chapter analyzes and compares the relevant statutory mechanisms related to investigations and non-compliance under each provincial regime.

4.1 Investigating Bodies and Authorities

Each province designates a relevant authority to investigate complaints and compliance under the statute. A few provinces have created specialized units in this regard, while others subsume investigative powers under existing employment regulation bodies.

In BC, the Temporary Foreign Worker Protection Unit (TFWPU) is listed as the contact for issues arising under the *TFWPA* on the Government of British Columbia website.²³⁶ Under the *TFWPA*, the Director of Employment Standards may conduct investigations to ensure compliance with the Act “whether or not the director has received a complaint.”²³⁷ Thus, the TFWPU is able to conduct both complaint-based investigations and proactive audits and investigations of employers.

Similarly, in Saskatchewan, the Program Integrity Unit (PIU) was created specifically to protect immigrant and temporary foreign workers.²³⁸ The PIU was initially administered by the Ministry of Economy²³⁹ and in 2017 the responsibility for *FWRISA* was transferred to the Ministry of Labour Relations and Workplace Safety.²⁴⁰ In the PIU, there are two Integrity Officers who carry out

²³⁶ See, e.g., “Register as an Employer of Temporary Foreign Workers” (23 June 2021) online: *Government of BC* <gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/hiring/hire-temporary-foreign-workers/register-as-employer>.

²³⁷ BC Act, *supra* note 10, s 32(a).

²³⁸ Government of Saskatchewan, “Governments of Canada and Saskatchewan Co-Operate to Protect Temporary Foreign Workers” (26 May 2010), online: <saskatchewan.ca/government/news-and-media/2010/may/26/governments-of-canada-and-saskatchewan-cooperate-to-protect-temporary-foreign-workers>.

²³⁹ See, e.g., Saskatchewan, *Annual Report for 2016-2017* (Regina: Ministry of the Economy, 2017) <publications.saskatchewan.ca/#/home> accessed 23 June 2021.

²⁴⁰ Saskatchewan, *Annual Report for 2017-18* (Regina: Ministry of Labour Relations and Workplace Safety, 2018) <publications.saskatchewan.ca/#/home> accessed 23 June 2021 at 10.

investigations and audits, along with one intake and referral officer.²⁴¹ The PIU conducts both complaint-based investigations²⁴² and proactive investigations.²⁴³

In each of Manitoba and Nova Scotia, existing labour and employment regulatory bodies are responsible for investigations related to the relevant statutory schemes. Under the Manitoba Employment Standards Division, the Special Investigation Unit (SIU) is responsible for identifying and investigating violations under *WRAPA*.²⁴⁴ The SIU also investigates violations under other Manitoba employment laws including *The Employment Standards Code* and *The Construction Industry Wages Act*.²⁴⁵ Therefore, the SIU does not exclusively investigate *WRAPA* claims. The SIU conducts both complaint-based investigations and proactive investigations.²⁴⁶ For proactive investigations, the SIU may investigate specific workplaces and conduct industry-wide reviews.²⁴⁷

In Nova Scotia, the Labour Standards Division carries out enforcement of the *Labour Standards Code* including the provisions applicable to the protection of temporary foreign workers.²⁴⁸ Labour Standards responds to complaints filed by employees,²⁴⁹ and also reports carrying out proactive enforcement of the temporary foreign worker provisions, including conducting financial audits of registered employers and monitoring compliance with terms and conditions of the LMIA.²⁵⁰ The Labour Standards Division appears to rely primarily on employer self-audits for compliance.²⁵¹ Labour Standards estimates that 75% of complaints arise where employers do not know the applicable employment law, and thus filling in this information gap with self-audit packages can help employers avoid such violations.²⁵² Labour Standards has targeted select industries with self-audits.²⁵³

In Quebec, the Commission des normes, de l'équité, de la santé et de la sécurité du travail (CNESST) supervises the implementation and application of labour standards, including provisions of the Act and Regulation specific to the protection of temporary foreign workers.²⁵⁴ Under the Act, CNESST is empowered to disseminate information relating to labour standards, receive and indemnify

²⁴¹ CCR, "Provincial Report Cards", *supra* note 28 at 11.

²⁴² "Resolving Immigration Issues and Complaints" (24 June 2021) online: *Government of Saskatchewan, Employment Standards* <saskatchewan.ca/residents/moving-to-saskatchewan/live-in-saskatchewan/by-immigrating/resolving-immigration-issues-and-complaints>.

²⁴³ CCR, "Provincial Report Cards", *supra* note 28 at 11.

²⁴⁴ SIU Manitoba, *supra* note 29.

²⁴⁵ *Ibid.*

²⁴⁶ *Ibid.*

²⁴⁷ *Ibid.*

²⁴⁸ Guide to the Nova Scotia Labour Standards Code, *supra* note 24.

²⁴⁹ "Complaint Process" (10 March 2020) online: *Nova Scotia Department of Labour and Advanced Education* <novascotia.ca/lae/employmentrights/process.asp>.

²⁵⁰ CCR, "Provincial Report Cards", *supra* note 28 at 21.

²⁵¹ Nova Scotia, Labour Standards, *Labour Standards Self-Audits* (Halifax: Labour Standards, 2013) <novascotia.ca/lae/cci/features/docs/CCI_LabourStandardsSelfAudit.pdf> accessed 24 June 2021.

²⁵² *Ibid.*

²⁵³ *Ibid.*

²⁵⁴ "Temporary Workers" (5 March 2021), online: *Immigration Québec* <immigration-quebec.gouv.qc.ca/en/immigrate-settle/temporary-workers/index.html>.

complaints from employees, endeavour to bring about agreements between employers and employees as to their disagreements in relation to the application of the Act, and supervise the application of labour standards, including, where necessary, transmitting recommendations to the Minister of Labour.²⁵⁵ Although the CNESST has the power to carry out proactive investigations “on its own initiative,”²⁵⁶ evidence suggests that it carries out mostly complaint-based investigations, stating on their website that an investigation may be initiated as a result of an accident, appeal, dispute, or report.²⁵⁷

There is no entity in New Brunswick created specifically for the enforcement of temporary foreign worker legislation, as there are in Saskatchewan and British Columbia. Like Manitoba, Quebec, and Nova Scotia, the entities enforcing temporary foreign worker legislation in New Brunswick also investigate and enforce claims under other employment standards regulations and statutes. Specifically, in New Brunswick, the Employment Standards Branch (ESB) oversees the implementation, application, and enforcement of the *Employment Standards Act* and its regulations, including those relating to temporary foreign workers.²⁵⁸ The ESB is also responsible for initiating investigations in response to formal complaints received under the Act²⁵⁹ but there are no provisions specifically authorizing the branch to conduct investigations on its own initiative.²⁶⁰

4.2 Initiating Investigations

4.2.1 Proactive Investigations

Directors in each province have powers to conduct investigations on their own initiative.²⁶¹ Some provinces conduct proactive auditing and monitoring. In New Brunswick and British Columbia, the legislation contemplates the possibility of the Director investigating an employer whether or not a complaint is filed.²⁶² Similarly, in Quebec, the CNESST has power to make inquiries on its own initiative and on behalf of temporary foreign workers.²⁶³ Further, if following any inquiry, CNESST has reason to believe that the rights of a temporary foreign worker have been violated under the Act, they may

²⁵⁵ QC Act, *supra* note 14, ss 5(1)–(5).

²⁵⁶ QC Act, *supra* note 14, s 105.

²⁵⁷ “Nos Services” (last visited 24 June 2021), online: *Commission des normes, de l'équité, de la santé et de la sécurité du travail* <cnestt.gouv.qc.ca/fr/lorganisation/cnestt/declaration-services/nos-services>. See also CCR, “Provincial Report Cards”, *supra* note 28 at 17.

²⁵⁸ New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2014–2015*, (Fredricton: Department of Post-Secondary Education, Training, and Labour, 2015) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications > at 14.

²⁵⁹ NB Act, *supra* note 10, ss 62(1), 62(1.1).

²⁶⁰ Canadian Council for Refugees, “Provincial Report Card: New Brunswick” in “Evaluating Migrant Worker Rights in Canada: 2018” (May 2018), online (pdf): Canadian Council for Refugees <ccrweb.ca/sites/ccrweb.ca/files/reportcards_complete_en.pdf> [CCR].

²⁶¹ BC Act, *supra* note 10, s 32(a); MB Act, *supra* note 11, s 19(1); NS Code, *supra* note 11, s 21(2); SK Act, *supra* note 10, s 36(1).

²⁶² NB Act, *supra* note 10, ss 63(1), 63(2); BC Act, *supra* note 10, s 32(a).

²⁶³ QC Act, *supra* note 14, s 105.

exercise legal recourse, even if no complaint has been filed.²⁶⁴ In Manitoba, the SIU conducts both complaint-based and proactive investigations, the latter of which include both specific workplace investigations as well as industry-wide reviews.²⁶⁵ Saskatchewan and Nova Scotia each give authority to a relevant government body to carry out proactive audits of employers.²⁶⁶ In Nova Scotia, this includes the ability to conduct financial audits and monitor for compliance with the LMIA.²⁶⁷

Recommendations

Ensure that provincial bodies responsible for investigation and enforcement of the statute have authority to conduct proactive investigations.

Conduct proactive investigations both on-site and through regular auditing of employer and recruiter filings.

Report statistics and other data publicly concerning proactive investigation and auditing activities.

4.2.2 Complaints-based Investigations

Every province except Saskatchewan has legislated rules regarding receipt and investigations based on complaints.

In each province, a worker may file a complaint on their own behalf, and in some provinces, other actors may also file complaints. For example, in BC, a worker or a third-party can file a complaint by filling out a complaint form from Employment Standards and submitting relevant evidence either online or in person.²⁶⁸ In Quebec, a worker can file a complaint with CNESST via an online tool where their employer is not paying them wages, they have been subject to harassment or they have been dismissed without cause.²⁶⁹ Quebec also allows for a non-profit organization to file a complaint on behalf of a temporary foreign worker, in addition to workers having the ability to file their own complaints.²⁷⁰ In each of Manitoba, Nova Scotia, and New Brunswick, workers can file complaints with

²⁶⁴ QC Act, *supra* note 14, s 92.10.

²⁶⁵ SIU Manitoba, *supra* note 29.

²⁶⁶ CCR, "Provincial Report Cards", *supra* note 28 at 11; CCR, "Provincial Report Cards", *supra* note 28 at 21.

²⁶⁷ CCR, "Provincial Report Cards", *supra* note 28 at 21.

²⁶⁸ "Get Informed" (last accessed 24 June 2021) online: *Labour Standards BC* <gov.bc.ca/gov/content/employment-business/employment-standards-advice/employment-standards/complaint-process/get-informed>.

²⁶⁹ "Situations where there are grounds for filing a complaint" (last accessed 24 June 2021) online: *Commission des normes, de l'équité, de la santé et de la sécurité du travail* <cnesst.gouv.qc.ca/en/node/1146966/complaints-recourses/situations-where-there-are-grounds-filing>. See also "How to file a complaint" (last accessed 24 June 2021) online: *Commission des normes, de l'équité, de la santé et de la sécurité du travail* <cnesst.gouv.qc.ca/en/node/1146966/complaints-recourses/how-file-complaint>.

²⁷⁰ QC Act, *supra* note 14, s 102.

the relevant government bodies.²⁷¹ Finally, the federal government provides an online complaint tool that allows anyone to report suspected mistreatment of temporary foreign workers.²⁷²

While complaints mechanisms for workers are an important vehicle for communication, there are many disincentives and obstacles for workers to use these mechanisms. First, knowledge of rights and obligations under relevant employment and other laws may be inconsistent, as discussed in Chapter 3. Second, language barriers may pose an obstacle. While the federal government tool is available in each of English, French and Spanish,²⁷³ most complaints mechanisms available at provincial levels will operate in English and French only. As with earlier recommendations concerning contracts, providing complaint information and forms in multiple languages may facilitate greater access for temporary foreign workers. Finally, challenges in accessing the complaints system may arise. For those available online, challenges in having adequate access to internet may exist, particularly for farm workers and others in remote locations. Alternatively, complaint bodies that require in-person filings may create obstacles for workers who have neither the time nor means of transportation to attend in-person. Opening as many channels for filing a complaint as possible may work towards mitigating these logistical obstacles.

Uniquely, BC allows for anonymous complaints,²⁷⁴ a protection that may result in greater reporting of non-compliance under the Act. This is especially beneficial for temporary foreign workers for whom fear of employer reprisal, including deportation and “blacklisting” is commonly asserted as a significant disincentive to complain or report mistreatment.²⁷⁵ Similarly, New Brunswick’s legislation allows for a complainant to request that their identity be kept confidential where there is a possibility of intimidation or retaliation. However, if the Director believes that keeping the identity of the complainant confidential would create an unfair investigation, the Director is at liberty to dismiss the complaint.²⁷⁶

Some provinces require internal resolution or cooperation with an employer, which may act as a disincentive for temporary foreign workers. For example, in Quebec, according to the CNESST website, an employee must first approach their employer to seek internal resolution before filing a complaint,

²⁷¹ “Fact Sheet” (last accessed 24 June 2021), online: *Employment Standards Manitoba* <manitoba.ca/labour/standards/doc,filing-claim,factsheet.html>; “Complaint Process” (last accessed 24 June 2021), online: *Department of Labour and Advanced Education Nova Scotia* <novascotia.ca/lae/employmentrights/process.asp>; “Making a Complaint” (last accessed 24 June 2021), online: *Department of Post-Secondary Education, Training and Labour New Brunswick* <gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/People/content/EmploymentStandards/making_a_complaint.html>.

²⁷² “Report abuse or misuse of temporary foreign workers: What to tell us” (last modified 30 March 2021), online: *Employment and Social Development Canada* <canada.ca/en/employment-social-development/services/foreign-workers/fraud/report-online-fraud/what-to-send.html>.

²⁷³ “Report abuse or misuse of temporary foreign workers: What to tell us” (last modified 30 March 2021), online: *Employment and Social Development Canada* <canada.ca/en/employment-social-development/services/foreign-workers/fraud/report-online-fraud/what-to-send.html>.

²⁷⁴ BC Act, *supra* note 10, s 34(1).

²⁷⁵ Faraday, “Profiting from the Precarious”, *supra* note 52 at 44.

²⁷⁶ NB Act, *supra* note 10, s 62(4).

an approach that BC's Employment Standards Branch abandoned in 2019.²⁷⁷ Similarly, in New Brunswick, an employee who files a complaint under the *Employment Standards Act* will likely have an Employment Standards Officer work with them and the employer to determine whether a violation of the Act has occurred.²⁷⁸

Investigative powers under each provincial statute are accompanied by limitation periods. These limitation periods typically serve to prescribe a time limit for filing a complaint or conducting an investigation based on the date of the alleged contravention under the relevant statute (or reasonable discovery of it). For example, Nova Scotia has the shortest limitation period on complaints or investigations, specifying that these must have been initiated within six months of the alleged contravention in the case of administrative proceedings.²⁷⁹ Manitoba's legislation likewise adopts the six-month limitation period under the Manitoba *Employment Standards Code* for complaints related to improper fees.²⁸⁰ New Brunswick allows for a complaint to be filed within 12 months of the alleged contravention.²⁸¹ BC's limitation period for bringing complaints is two years post-discovery;²⁸² however, there is no explicit limitation on the director's ability to conduct investigations.²⁸³ The Saskatchewan Act bars prosecutions after four years post-discovery by the director.²⁸⁴

Quebec's limitation period on complaints or investigations vary depending on the nature of the complaint. For instance, an employee who believes that they have been discriminated against on the basis of employment status or hiring date must file a complaint within 12 months of becoming aware of the discrimination.²⁸⁵ While an employee who believes that they have not been dismissed for good and sufficient cause must make their complaint within 45 days of the dismissal in order to exercise their rights under the Act.²⁸⁶ Finally, an employee who has been the victim of psychological harassment is granted a longer deadline of two years within which to file a complaint.²⁸⁷ There is no provision specific to complaints regarding the mistreatment of temporary foreign workers. The complexity of this scheme has the potential to confuse foreign workers who may face language or

²⁷⁷ Government of BC, "Saying goodbye to the 'self-help kit'", (28 August 2019) online: <<https://news.gov.bc.ca/releases/2019LBR0023-001663>>.

²⁷⁸ "Making a Complaint" (last accessed 24 June 2021), online: *Department of Post-Secondary Education, Training and Labour New Brunswick* <https://www2.gnb.ca/content/gnb/en/departments/post-secondary_education_training_and_labour/People/content/EmploymentStandards/making_a_complaint.html>.

²⁷⁹ NS Code, *supra* note 11, ss 21(3D), 81.

²⁸⁰ MB Act, *supra* note 11, s 20(5).

²⁸¹ NB Act, *supra* note 10, s 61(1).

²⁸² BC Act, *supra* note 10, s 33(2).

²⁸³ *Ibid*, s 32. This was left up to the Director's discretion in BC: [Minister Bains] "we must be reasonable and the Director has that discretion. We're not talking here about someone who mistreated their employee three years ago—didn't pay them, inadvertently maybe. If there's a serious current violation...certainly that would be taken into consideration...here we are talking about now or the immediate past. It would still be at the discretion of the Director": BC Hansard, *supra* note 1, (7 November 2018) at 6410.

²⁸⁴ SK Act, *supra* note 10, s 44.

²⁸⁵ QC Act, *supra* note 14, s 121.1.

²⁸⁶ *Ibid*, s 124.

²⁸⁷ *Ibid*, s 123.7.

literacy barriers and thus prevent them from filing a complaint or may invalidate a complaint filed outside of the applicable limitation period.

A notable feature of BC's legislation is that it gives the director no discretion to refuse to investigate a complaint, except where the limitation period has expired, the complaint is unrelated to the Act, the complaint is frivolous or made in bad faith, there is insufficient evidence to support the complaint, or it is subject to ongoing proceedings.²⁸⁸ Similarly, in Nova Scotia, Quebec and Manitoba, the director has no discretion to refuse to investigate a complaint, except in similar identified circumstances.²⁸⁹ In New Brunswick, the Director must act upon a complaint where they are satisfied that the complaint is a violation of the Act and mediation to resolve the complaint has not been attempted or was unsuccessful.²⁹⁰

²⁸⁸ BC Act, *supra* note 10, ss 35(1), 35(2).

²⁸⁹ MB Act, *supra* note 11, s 20(5); NS Code, *supra* note 11, s 21(1). The Director in Manitoba can refuse to investigate if the matter has settled or the complaint is "frivolous or vexatious." In Québec, the CNESST may refuse to investigate where complaints are frivolous or made in bad faith: MB Act, *supra* note 11, s 106.

²⁹⁰ NB Act, *supra* note 10, s 62(1).

Recommendations

Ensure that complaints may be filed on behalf of a worker or by third parties to facilitate greater access to justice in initiating investigations.

Provide a mechanism for anonymous complaints to be registered and subject to a preliminary investigation to facilitate greater access to justice for temporary foreign workers who often face significant disincentives to make a formal complaint in relation to their participation under the TFWP in Canada.

Ensure that complaint forms and information are available in multiple languages and mediums (i.e., online, by phone, in-person filing options).

Evaluate and clearly communicate what kind of evidence is required to support a complaint, especially knowing the limited availability that many workers and third parties will have to access direct evidence such as documents or records.

Where a complaint is received without sufficient evidence, institute a practice to conduct a preliminary investigation of the relevant filings and documents concerning the recruiter and/or employer to ascertain possible supporting evidence already available within the regulatory body's records.

Create a user-friendly and simplified complaints form and process and publicly advertise this through available channels including the provinces' websites, in multiple languages, especially first languages of temporary foreign worker populations in the province.

4.3 Investigative Powers

In order to facilitate investigations, each provincial statute sets out a number of investigative powers that the director or relevant administrative authority may exercise.

4.3.1 Authorized Investigation Activities

All provinces give relevant investigative bodies a common set of investigative powers including:

- the ability to enter any place during regular working hours;²⁹¹
- to inspect the premises and question present individuals;²⁹²

²⁹¹ To illustrate these differences in wording, Manitoba and Saskatchewan use "any reasonable time": MB Act, *supra* note 11, s 19(2); SK Act, *supra* note 10, s 36(2)(a). Nova Scotia uses "all reasonable times": NS Code, *supra* note 11, s 16(d). See also NB Act, *supra* note 10, s 58(1); QC Act, *supra* note 14, s 109(1).

²⁹² BC Act, *supra* note 10, s 46(1)(b); MB Act, *supra* note 11, s 19(2); NS Code, *supra* note 11, s. 16(d); SK Act, *supra* note 10, s 36(2)(b)-(e); QC Act, *supra* note 14, s 109(1).

- to request or compel disclosure or production of records;²⁹³
- to inspect records;²⁹⁴ and,
- to remove or copy records.²⁹⁵

In addition to the above, BC and Saskatchewan permit the investigating authority to obtain search warrants. The director in BC may only obtain a warrant to enter a private residence.²⁹⁶ By contrast, the director's powers in Saskatchewan are more akin to police powers as they may obtain a warrant to enter any premises, search a vehicle, or seize and remove any property that "may be evidence of an offence against [the] Act."²⁹⁷ A warrant may be dispensed with where they have reasonable grounds to believe that delay would endanger human life or result in the loss of evidence.²⁹⁸ The director may furthermore "enter on or pass over any land, whether enclosed or not, without a warrant" when carrying out their duties.²⁹⁹

Recommendations

Enable the relevant provincial investigative authorities to obtain search warrants, where necessary, including in relation to premises outside the workplace and for vehicles and to remove any property that may be evidence of an offence under the statute.

Ensure, in accordance with general investigating powers, that the relevant provincial authorities may enter onto workplace property at any time, with or without prior notice or authorization, to facilitate investigative activities.

Ensure that provincial investigative authorities have powers to compel document and other disclosure and to copy and remove records in addition to inspecting them on-site.

4.3.2 Information Sharing and Cooperation

Some provinces contemplate under the relevant legislation the possibility of relevant investigative authorities sharing information or engaging in other cooperative conduct with other authorities both within and beyond the province.

For example, in BC, Manitoba and Saskatchewan, the relevant legislation sets out rules regarding the director's ability to share information with other jurisdictions. The most extensive regulations in this

²⁹³ BC Act, *supra* note 10, ss 42, 46(1)(e)-(f); MB Act, *supra* note 11, s 19(2); NS Code, *supra* note 11, ss 15(1), 16(b), 16(d); SK Act, *supra* note 10, s 36(3)-(6); NB Act, *supra* note 10, s 58(1); QC Act, *supra* note 14, s 109(2).

²⁹⁴ BC Act, *supra* note 10, s 46(1)(c); MB Act, *supra* note 11, s 19(2); NS Code, *supra* note 11, s 16(a); SK Act, *supra* note 10, s 36(2)(b). See also NB Act, *supra* note 10, s 58(1).

²⁹⁵ BC Act, *supra* note 10, s 46(1)(d); MB Act, *supra* note 11, s 19(2); NS Code, *supra* note 11, s 16(c); SK Act, *supra* note 10, s 36(2)(f). See also NB Act, *supra* note 10, s 58(1).

²⁹⁶ BC Act, *supra* note 10, s 75.

²⁹⁷ SK Act, *supra* note 10, ss 37(1), 37(2).

²⁹⁸ *Ibid*, s 37(3).

²⁹⁹ *Ibid*, s 39.

respect exist in BC, which permits the director to share information collected under the *Act* with Canadian federal and provincial government bodies, departments or agencies of other States, police services, and regulatory bodies governing recruiters.³⁰⁰ However, the Director must not disclose identifying information about the complainant where requested by the complainant.³⁰¹ Manitoba, Saskatchewan and New Brunswick similarly permit information sharing with Canadian federal and provincial government bodies³⁰² as well as any non-governmental regulatory bodies governing recruiters in the case of Manitoba³⁰³ and law enforcement authorities in the case of New Brunswick.³⁰⁴ Notably in New Brunswick, where the Director's information sharing powers under the *Act* are in conflict with provincial privacy laws, the powers conferred by the *Employment Standards Act* prevail.³⁰⁵

In addition to the above, Saskatchewan's legislation expressly enables the director to conduct joint inspections, examinations, audits and investigations with other government bodies outside the province.³⁰⁶

Recommendations

Ensure that broad information sharing powers exist under the statute including the ability to share relevant information for investigative purposes with other regulatory bodies in the province, other provinces, and the federal government.

Ensure appropriate limits are placed on information-sharing such as firewall requirements not to disclose immigration status to border enforcement authorities except where necessary to the investigation.

Ensure appropriate privacy interests are accounted for in information-sharing rules and practices to protect workers from punitive action by any third party including employers, recruiters, or home country authorities.

4.4 Investigation Data

Data regarding investigations in each province appears to be both inconsistently recorded and available due to issues with information and data management systems. This creates serious

³⁰⁰ BC Act, *supra* note 10, s 30. Minister Bains pointed to Mexico as a possible foreign recipient of this information and indicated that the information that could be shared included the names of recruiters and employers and "information that they have violated, they have been violating, the temporary foreign worker act": BC Hansard, *supra* note 1, (7 November 2018) at 6412.

³⁰¹ BC Act, *supra* note 10, s 34(1).

³⁰² MB Act, *supra* note 11, s 23(1); SK Act, *supra* note 10, s 35(2)(a); NB Act, *supra* note 10, s 38.9(6).

³⁰³ MB Regulation, *supra* note 11, s 23(2).

³⁰⁴ NB Act, *supra* note 10, s 38.9(6).

³⁰⁵ *Ibid*, s 38.9(9).

³⁰⁶ SK Act, *supra* note 10, s 35(2).

obstacles to understanding and evaluating the effectiveness of the legislative regimes, not only for external actors like researchers, but also for the relevant governmental departments.

In terms of data collection, many existing databases and information management systems appeared to be out-of-date and not easily able to record, search and sort records by relevant information, such as by including fields that indicated whether a recruiter or employer was registered under the relevant specific legislation in the province, whether an investigation or enforcement proceedings were specifically related to such legislation, and similar information. The lack of data recorded in this way further hampered the ability to easily search and sort entries to populate data specific to these legislative regimes. As such, requests made to access this data were unable to be fulfilled.

Recommendations

Create usable and searchable internal databases for recording information obtained under the provincial statute, including in relation to employers, recruiters and workers in the province.

Conduct regular reviews of internal data to monitor the operational effectiveness of the legislative regime such as: the number of investigations initiated versus completed; the number of recruiters and employers proactively audited or investigated relative to total numbers; rates of compliance and non-compliance based on different investigative activities; and, other indicators.

Regularly publish aggregate data on investigation and auditing activities including: how many investigations were conducted and completed in the relevant time period; how the investigation was initiated; the outcomes of investigations; and, penalties where appropriate.

In some jurisdictions, general and specific information concerning enforcement of employment standards, and in relation to temporary foreign workers, is sometimes reported publicly, though inconsistently and often in aggregate or anecdotal form. The following information is based on this type of information where it was available and accessible.³⁰⁷

4.4.1 Manitoba

Manitoba's SIU reported conducting over 400 investigations during the year 2014-2015.³⁰⁸ However, these investigations relate to SIU's overall jurisdiction, not only to enforcement of *WRAPA*.

³⁰⁷ Available data and commentary concerning Manitoba, Saskatchewan, New Brunswick and Nova Scotia are presented. In each of BC and Québec, provincial legislation is very new and investigation and enforcement data not yet available.

³⁰⁸ Employment Standards, "Special Investigations Unit", online: Government of Manitoba <gov.mb.ca/labour/standards/special_investigations_unit.html>.

According to the CCR, the SIU completed 36 investigations related to temporary foreign workers and other newcomers from 2015-2017.³⁰⁹ 52% of investigated employers or recruiters were non-compliant with at least one major provision under the *Employment Standards Code* or *WRAPA*,³¹⁰ likely in relation to issues such as charging or recouping recruitment fees, unpaid wages and payment of wages at a lower-than-agreed rate.³¹¹

According to the Migrant Worker Solidarity Network Manitoba, the SIU conducted an inspection in 2012 of approximately 25 farms employing foreign workers in Manitoba and found 56% of farms were non-compliant with provincial employment standards. Violations included “not paying the Labour Market Opinion rate, not recording workers’ hours worked, failure to pay workers regularly, and overtime wages not being properly calculated.”³¹² In a follow-up investigation in 2013, most of these violations had been corrected.³¹³

4.4.2 Saskatchewan

In Saskatchewan, the Ministry of the Economy (up to 2017), and Ministry of Labour (since 2017), have published some aggregate data concerning investigations and enforcement under *FWRISA* in annual reports. In 2015-2016, the Ministry of the Economy reported that it initiated 199 investigations and completed 123 investigations³¹⁴ while in 2016-2017 it reported investigating 311 potential violations and completing 259 investigations.³¹⁵ Since transference of jurisdiction for *FWRISA* to the Ministry of Labour in 2017, no investigation statistics have been provided, though in 2018-2019, the Ministry of Labour reported that 460 employers registered under *FWRISA* were audited and almost all (99.5%) were found in compliance with the legislation.³¹⁶ In that same year, 72 investigations were completed, resulting in 8 employer registration suspensions.³¹⁷ In 2019-2020, 84 investigations were completed and 15 employer registrations suspended.³¹⁸ Further in 2019-2020, 473 employers were audited, with

³⁰⁹ CCR, “Provincial Report Cards”, *supra* note 28 at 13.

³¹⁰ *Ibid.*

³¹¹ “Wage Abuses of Foreign Workers” (last accessed 24 June 2021), online: *Government of Manitoba* <gov.mb.ca/labour/standards/siu_wage_abuses_of_foreign_workers.html>.

³¹² Migrant Worker Solidarity Network Manitoba, “A brief on the Temporary Foreign Worker Program” (20 May 2016) submitted to the House of Commons Standing Committee on Human Resources, Skill and Social Development and the Status of Persons with Disabilities at 6.

³¹³ *Ibid.*

³¹⁴ Saskatchewan, *Annual Report for 2015-2016* at 21 (Regina: Ministry of Labour Relations and Workplace Safety, 2016) <publications.saskatchewan.ca/#/home> accessed 23 June 2021.

³¹⁵ *Ibid.*

³¹⁶ Saskatchewan, *Annual Report for 2018-2019* at 6 (Regina: Ministry of Labour Relations and Workplace Safety, 2016) <publications.saskatchewan.ca/#/home> accessed 23 June 2021.

³¹⁷ Saskatchewan, Ministry of Labour Relations and Labour Safety, *2019-2021 Annual Report* (Regina, Ministry of Labour Relations and Labour Safety, 2021) <saskatchewan.ca/government/government-structure/ministries/labour-relations-and-workplace-safety#plans-and-annual-reports> accessed 25 June 2021 at 6.

³¹⁸ *Ibid.*

a 97% compliance rate,³¹⁹ and in 2020-2021 460 employers were audited with a 99% compliance rate.³²⁰

The CCR has separately reported that between 2014-2017, 500 employers and licensees were investigated under the *FWRISA* and 206 employer audits and 56 licensee audits were conducted.³²¹ Independent research by Andrew Stevens further provides some information from the year 2017-2018, including 40 employer audits conducted with a rate of 3% non-compliance.³²²

4.4.3 New Brunswick

New Brunswick publishes general data concerning investigation and enforcement of employment standards, though this is not particular to specific provisions regulating the employment of temporary foreign workers in the province.³²³

³¹⁹ Saskatchewan, Ministry of Labour Relations and Labour Safety, *2019-2021 Annual Report* (Regina, Ministry of Labour Relations and Labour Safety, 2021) <saskatchewan.ca/government/government-structure/ministries/labour-relations-and-workplace-safety#plans-and-annual-reports> accessed 25 June 2021 at 7.

³²⁰ *Ibid.*

³²¹ *Ibid.*

³²² Stevens, *supra* note 142 at 15.

³²³ New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2014-2015*, (Fredericton: Department of Post-Secondary Education, Training, and Labour, 2015) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications> accessed 25 June 2021; New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2015-2016*, (Fredericton: Department of Post-Secondary Education, Training, and Labour, 2016) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications> accessed 25 June 2021; New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2016-2017*, (Fredericton: Department of Post-Secondary Education, Training, and Labour, 2017) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications> accessed 25 June 2021; New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2017-2018*, (Fredericton: Department of Post-Secondary Education, Training, and Labour, 2018) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications> accessed 25 June 2021; New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2018-2019*, (Fredericton: Department of Post-Secondary Education, Training, and Labour, 2019) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications> accessed 25 June 2021; New Brunswick, Department of Post-Secondary Education, Training, and Labour, *Annual Report for 2019-2020*, (Fredericton: Department of Post-Secondary Education, Training, and Labour, 2020) <gnb.ca/content/dam/gnb/Departments/petl-epft/PDF/Publications> accessed 25 June 2021.

Table 8: Enforcement of Employment Standards by year, New Brunswick

	Number of information sessions	Formal complaints investigated	Moneys recovered for employees³²⁴	Audits³²⁵
2014-2015	130	803	\$533,446	N/A
2015-2016	211	903	\$829,783	N/A
2016-2017	167	707	N/A	45
2017-2018	210	886	N/A	45
2018-2019	198	986	N/A	48
2019-2020	143	1,149	N/A	35

Available data from CCR reports that in 2014-2015, 17 seafood processing companies employing temporary foreign workers were proactively investigated and of those, seven were found in contraction of employment standards.³²⁶

4.4.4 Nova Scotia

Nova Scotia does not publish any data concerning investigation, enforcement or penalties under the *Labour Standards Code* generally nor in relation specifically to its temporary foreign worker recruitment and employment regulations. However, as will be discussed in the next chapter, four legal decisions were identified at the Nova Scotia Labour Board concerning contraventions of the *Code* in the recruitment and employment of temporary foreign workers.

³²⁴ The department no longer reports on this metric in its Annual Reports after 2015-2016.

³²⁵ The department does not clarify what the auditing process is or how employers are selected for audit. The department did not report on this metric prior to 2016.

³²⁶ CCR, "Provincial Report Cards", *supra* note 28 at 19.

5. Enforcement and Penalties

Where an investigation has revealed non-compliance by a recruiter and/or employer under the relevant statute, enforcement mechanisms in the form of penalties and other remedies may be available, although it appears that most jurisdictions adopt an informal approach of education and rectification with the parties before utilizing available penalties and other enforcement mechanisms under the statute. This chapter analyzes and compares the available enforcement mechanisms and penalties under each provincial statute and reviews the limited data available concerning their use in practice.

5.1 Offences

In each province, substantive obligations and prohibitions of activity are enforced by way of prescribed penalty and offences for contravention.

BC's legislation identifies four generally worded offences which are similarly set out in other provinces:

- a) contravening the Act or the regulations;³²⁷
- b) making a "false or misleading statement to the director;"
- c) destroying required documents; and
- d) "hinder[ing], obstruct[ing] or interfer[ing]" with the director or their surrogates.³²⁸

In Quebec, the legislation also includes specific offences for:

- the failure to keep, or the falsification or alteration of a register or document relating to the activities contemplated within the Act;³²⁹
- being party to an agreement to substandard conditions of employment;³³⁰
- attempting to commit an offence that is punishable under the Act; and,³³¹
- aiding or inciting another person to commit such an offence.³³²

³²⁷ Notably, this would include recruiting or employing a foreign worker without the requisite licence or registration.

³²⁸ BC Act, *supra* note 10, s 80(1). See also MB Act, *supra* note 11, s 28(1); NS Code, *supra* note 11, s 93(1); SK Act, *supra* note 10, s 40(1); QC Act, *supra* note 14, s 140; NB Act, *supra* note 10, s 80. An example of different wording is the offence in SK Act, *supra* note 10, s. 40(1)(g) of "fail[ing] to provide all reasonable assistance when required to do so for the purposes of aiding in the conduct of an inquiry, inspection, examination or audit". This seems to be captured by BC Act, *supra* note 10, s 80(1)(d).

³²⁹ QC Act, *supra* note 14, s 139.

³³⁰ *Ibid*, s 140(5).

³³¹ *Ibid*, s 141.

³³² *Ibid*, s 141.

In most provinces, the offences should be read in tandem with the director's power under each Act to file an order in the provincial superior court registry and make it enforceable as if it had been an order of the court.³³³

Recommendation

Create specific offences for:

- falsification or alteration of a document related to activities regulated by the statute;
- attempting to commit an offence under the statute; and,
- aiding or inciting another person to commit an offence under the statute.

5.2 Administrative Penalties

5.2.1 Amendment, Suspension or Cancellation of Licences and Registration

Most provinces threaten suspension or cancellation of a recruiter's licence and/or employer's registration for contraventions of the statute.

Generally, a recruiter's licence may be suspended or cancelled for the same reasons that a licence may be denied on initial application, such as:³³⁴

- failure to comply with a requirement of the legislation, a condition of their licence, or an order made pursuant to legislation;
- providing false, misleading or inaccurate information to the relevant government body or refusal to provide requested information to that body;
- failure to post or maintain required financial security; or,
- where there are reasonable grounds to believe the licensee is or will not act in accordance with the legislation, or with integrity, honesty, or in the public interest.

Manitoba and Quebec add that suspension or cancellation can also follow from a failure to comply with the terms of a licence.³³⁵ Similarly, Saskatchewan allows for suspension or cancellation of a licence where there is failure to maintain security in the proper amount or failure to comply with an order.³³⁶ Moreover, Saskatchewan allows for licences to be suspended or cancelled with the licensee's

³³³ BC Act, *supra* note 10, s 54; MB Act, *supra* note 11, s 20(5); NS Code, *supra* note 11, s 90(2); SK Act, *supra* note 10, ss 46(8), 46(9) and NB Act, *supra* note 10, s 74(1-2) in the case of monetary orders. This makes the orders subject to contempt proceedings for non-compliance. See also BC Act, *supra* note 10, s 44(1) which makes a person's failure to cooperate with an order compelling assistance subject to contempt proceedings.

³³⁴ BC Act, *supra* note 10, s 7(1)(b); MB Act, *supra* note 11, s 10(1); NS Code, *supra* note 11, s 89R(1)(a); SK Act, *supra* note 10, s 12(1); QC Regulation, *supra* note 12, s 40.

³³⁵ MB Act, *supra* note 11, s 10(1)(d); QC Regulation, *supra* note 12, s 40.

³³⁶ SK Act, *supra* note 10, ss 12(1)(b), 12(1)(e).

consent.³³⁷ BC and Saskatchewan are unique in permitting a director to amend a licence for any reason for which a licence might be suspended or cancelled.³³⁸

Employer registrations are treated the same way as recruiters' licences in most jurisdictions that require employer registrations under the statute.³³⁹ An employer's registration can be suspended or cancelled in similar conditions as those stated above such as where: the employer fails to comply with the legislation, an order made under it or a condition of their registration; the employer has provided false, misleading or inaccurate information, or refuses to provide information to a relevant government body; the employer fails to comply with application labour and employment laws; or, there are reasonable grounds to believe the employer will not act in accordance with the legislation, or with integrity, honesty, or in the public interest.³⁴⁰

Recommendations

Allow for suspension or cancellation of a licence or registration where a party fails to comply with the terms, obligations or conditions of that licence or registration.

Provide the director with discretion to suspend or cancel a licence or registration where the party contravenes substantive provisions of, or obligations under, the relevant statute (as set out in Chapter 3).

5.2.2 Quasi-Criminal Penalties

BC, Saskatchewan, Manitoba, Nova Scotia, New Brunswick and Quebec each set out penalties including substantial fines and, in some provinces, imprisonment for regulatory offences under their respective statutes. These offences include: contravention of a provision of the statute;³⁴¹ making a false or misleading statement to the body administering the statute;³⁴² destroying documents required to be made or retained under the statute;³⁴³ hindering, obstructing or interfering with the

³³⁷ SK Act, *supra* note 10, s 12(1)(a).

³³⁸ BC Act, *supra* note 10, s 34(1); SK Act, *supra* note 10, s 12(1). This creates something of an anomaly with respect to the provision permitting refusal for the failure "to provide any information the Director required to be provided." Minister Bains' justification was that this could permit the Director to revoke a licence if they discover that information was falsified or misleading in the initial application, but the situation could arise if the recruiter or employer was later subject to an investigation: BC Hansard, *supra* note 1, (7 November 2018) at 6409.

³³⁹ BC Act, *supra* note 10, s 13(1)(b); MB Act, *supra* note 11, s 13(1); NS Code, *supra* note 11, s 89Y(1)(a)-(b); SK Act, *supra* note 10, s 20(1). New Brunswick's legislation does not appear to contemplate the ability to suspend or cancel an employer's registration.

³⁴⁰ *Ibid*

³⁴¹ BC Act, *supra* note 10, s 80(1)(a); SK Act, *supra* note 10, s 40(1); MB Act, *supra* note 11, s 28(1); NS Code, *supra* note 11, s 93(1)(f); QC Regulation, *supra* note 12, ss 92.5, 92.6.

³⁴² BC Act, *supra* note 10, s 80(1)(b); SK Act, *supra* note 10, s 40(1); MB Act, *supra* note 11, s 28(1); NS Code, *supra* note 11, s 93(1)(f); NB Act, *supra* note 10, s 82.

³⁴³ BC Act, *supra* note 10, s 80(1)(c); SK Act, *supra* note 10, s 40(1); MB Act, *supra* note 11, s 28(1); NS Code, *supra* note 11, s 93(1)(f).

statutory body's authority under the statute;³⁴⁴ failure to provide documents or information required by the Act;³⁴⁵ failure to provide reasonable assistance when required to do so to aid an inspection or audit;³⁴⁶ failure to furnish a bond or amount owing under the statute;³⁴⁷ and, failure to comply with an order.³⁴⁸

BC and Saskatchewan have the strictest sentencing provisions for regulatory offences under the respective acts. These provinces punish contraventions with possible imprisonment of up to one year for individual offenders.³⁴⁹ These provinces additionally provide for up to \$50,000 in fines for individuals and \$100,000 in fines for corporations³⁵⁰ which may be in addition to imprisonment in the case of individuals. In contrast, Manitoba's *WRAPA* does not include the possibility of imprisonment but does set out fines of up to \$25,000 for individuals and \$50,000 for corporations.³⁵¹ Nova Scotia adopts a graduated scale approach to penalties based on single versus multiple contraventions. The *Labour Code* provides for fines of up to \$2,500 for individuals and \$25,000 for corporations for a single offence.³⁵² Additional offences may be punished by additional fines in the above amounts or by three months' imprisonment.³⁵³ Each day in which a person or corporation contravenes the *Code* is treated as a separate offence.³⁵⁴ Similarly, Quebec adopts a graduated scale of monetary penalties with a first offence attracting a fine of \$600 to \$6000 and for subsequent offences, \$1,200 to \$12,000.³⁵⁵ Finally, in New Brunswick, the *Employment Standards Act* contemplates monetary penalties ranging between \$240 and \$10,200 per day, as well as the possibility of imprisonment of not more than 90 days.³⁵⁶

BC and Saskatchewan empower the director to publish a list of offenders under their respective Acts with details of their offences.³⁵⁷ BC's legislation also gives the public an independent right to request this information regardless of whether the director has made the information available.³⁵⁸

³⁴⁴ BC Act, *supra* note 10, s 80(1)(d); SK Act, *supra* note 10, s 40(1); MB Act, s.28(1); NS Act s.93(1)(f); NB Act, *supra* note 10, s 80.

³⁴⁵ SK Act, *supra* note 10, s 40(1); MB Act, *supra* note 11, s 28(1); NS Code, *supra* note 11, s 93(1)(f); NB Act, *supra* note 10, s 80.

³⁴⁶ SK Act, *supra* note 10, s 40(1); MB Act, *supra* note 11, s 28(1); NS Code, *supra* note 11, s 93(1)(f).

³⁴⁷ NS Code, *supra* note 11, s 93(1)(f).

³⁴⁸ NB Act, *supra* note 10, s 78(1).

³⁴⁹ BC Act, *supra* note 10, s 80(2)(a); SK Act, *supra* note 10, s 40(2).

³⁵⁰ BC Act, *supra* note 10, s 80(2); SK Act, *supra* note 10, s 40(2).

³⁵¹ MB Act, *supra* note 11, s 28(2).

³⁵² NS Code, *supra* note 11, s. 94(1)(a)-(c).

³⁵³ *Ibid*, s 94(2).

³⁵⁴ *Ibid*, s 94(3).

³⁵⁵ QC Act, *supra* note 14, s 140.1.

³⁵⁶ See NB Act, *supra* note 10, s 65; Provincial Offences Procedure Act, SNB 1987, c P-22.1, s 63(2).

³⁵⁷ BC Act, *supra* note 10, s 62(1); SK Act, *supra* note 10, s 40(3). The intent in BC was that the Director would have the discretion to not publish in case of minor contraventions and would not publish the names of offenders prior to the conclusion of any appeals: BC Hansard, *supra* note 1, (7 November 2018) at 6414-6415.

³⁵⁸ BC Act, *supra* note 10, s 62(2).

Recommendations

Ensure financial penalties for serious contraventions of the statute are significant in order to serve as a deterrent for relevant parties.

Proactively publish a list of offenders in order to increase the deterrent effect of the statute and increase transparency for relevant stakeholders and communities.

5.2.3 Other Remedies

In addition to the specific penalties above, some statutes provide the director with broad remedial discretion and powers.

All provinces permit the relevant regulatory authorities to order a recruiter or employer to compensate temporary foreign workers for improper fees charged.³⁵⁹

BC, New Brunswick and Saskatchewan set out additional remedies and broad remedial discretion for the province. For example, in BC and New Brunswick, the director has broad powers to: require a person to do something; refrain from doing something; post notices as specified; compensate people for money wrongfully collected; pay the director's costs in relation to investigations; and pay monetary penalties.³⁶⁰ The *TFWPA* explicitly authorizes the director to order an employer to hire, reinstate or compensate foreign workers for contraventions including with cost orders.³⁶¹ All these powers are supplementary to the director's discretion to add terms and conditions to an order.³⁶² Relatedly, Saskatchewan's legislation permits the director to order a person to comply with the Act³⁶³ and the reinstatement of a foreign worker against whom reprisals were taken³⁶⁴ but deals with compensation under general provisions permitting the director, or a court in the case of a prosecution for offences, to order compensation for losses suffered by foreign workers.³⁶⁵

Nova Scotia's legislation also provides additional remedies related to possession of property of a foreign worker. Where an employer or recruiter, or person working on behalf of either, has taken possession of, or retained, property that a foreign worker is entitled to possess, the legislation enables the director to make an order for that person to do any act that constitutes compliance with the

³⁵⁹ MB Act, *supra* note 11, s 20(1)-(3); NS Code, *supra* note 11, s 89B(3); SK Act, *supra* note 10, s 46(2)-(4); BC Act, *supra* note 10, s 38(2); QC Act, *supra* note 14, s 111; NB Act, *supra* note 10, s 63(1). As Manitoba's legislation prohibits only charging of recruitment fees, its remedies are restricted to compensating workers for improper fees.

³⁶⁰ BC Act, *supra* note 10, s 38(1); NB Act, *supra* note 10, s 65(d). Note that New Brunswick's legislation on this topic is not unique to temporary foreign workers, but generally held under employment standards law.

³⁶¹ BC Act, *supra* note 10, s 38(2).

³⁶² *Ibid*, s 38(3).

³⁶³ SK Act, *supra* note 10, s 40(4)(a).

³⁶⁴ *Ibid*, s 46(5).

³⁶⁵ *Ibid*, ss 40(4)(b)(ii), 46(2)-(4).

legislation (which could include returning the property)³⁶⁶ to rectify an injury caused to the worker or to provide compensation.³⁶⁷

Finally, some provinces provide for additional monetary penalties for infringements of the statute. BC's *TFWPA* authorizes a graduated scale of monetary penalties. Monetary penalties range from \$500 for a first infringement of the Act to \$2,500 and \$10,000 for second and third contraventions within a three-year period.³⁶⁸ Like in BC, New Brunswick uses a graduate scale of monetary penalties to enforce the specific provisions requiring registration for employers of temporary foreign workers. An employer who fails to complete the required registration will first receive a notice of non-compliance which specifies the provision that has been violated and requests compliance.³⁶⁹ If the employer does not remedy the violation within 30 days of receipt of the notice of non-compliance, the Director may impose an administrative penalty.³⁷⁰ The minimum penalty for a first time offence is \$150 and increases by increments of \$150 for each subsequent offence to a maximum of \$900.³⁷¹ The Director also has discretion to treat an offence relating to multiple persons as a separate offence with respect to each individual.³⁷²

Recommendations

Provide broad remedial discretion to the relevant provincial authorities including the power to order compliance, injunctive relief, reinstatement, and compensation.

Provide for a graduated scale of monetary penalties to attach to findings of non-compliance in order to serve as an additional deterrent.

5.3 Enforcement of Orders

While each province has a similar set of tools at its disposal for enforcing monetary orders, they differ in how much power they give to the director to enforce their orders directly.

Nova Scotia, New Brunswick and Saskatchewan provide only that the director's orders may be filed and rendered enforceable as if it had been an order of the court.³⁷³ This permits the director to recover amounts owing indirectly through the powers available to courts.

While BC and Manitoba also permit the director to file and order with their respective courts, they have carved out certain powers that the director may exercise directly. In particular, the director in

³⁶⁶ NS Code, *supra* note 11, s 89G(4)(a).

³⁶⁷ *Ibid*, s 89G(4)(b).

³⁶⁸ BC Regulation, *supra* note 115, s 4(2).

³⁶⁹ NB Act, *supra* note 10, s 64.1(3).

³⁷⁰ *Ibid*, s 64.1(4).

³⁷¹ *Ibid*, s 64.2(2).

³⁷² *Ibid*, s 64.2(3).

³⁷³ *Ibid*, ss 90(1), 90(2); SK Act, *supra* note 10, s 46(9); NB Act, *supra* note 10, s 74(1).

these provinces may garnish funds owed to the judgment debtor³⁷⁴ and hold a lien over their real or personal property.³⁷⁵ Under BC's legislation the director may require the debtor to post additional security³⁷⁶ and may directly seize the debtor's assets to satisfy an amount owing.³⁷⁷ In BC, the director's lien takes precedence over all other claims³⁷⁸ while in Manitoba, it takes precedence over all other claims to the amount of \$2,500.³⁷⁹

Similarly, in Quebec, the CNESST is entitled to use posted security to guarantee the enforcement of a monetary order under the legislation.³⁸⁰ However, temporary foreign worker recruitment agencies are not required to post security in Quebec, negating the ability to use this enforcement power in cases involving temporary foreign workers recruited by such agencies. Generally, where CNESST considers that there are amounts of money owed to an employee under the Act or Regulation, it is empowered to claim those amounts owed on the employee's behalf.³⁸¹ If the amounts remain unpaid, CNESST is empowered to exercise any recourses available to the employee under the legislation against the directors of a legal person.³⁸²

Recommendation

Provide the relevant provincial authorities with additional powers to enforce orders, especially monetary orders, including through:

- garnishment of wages;
- lien on properties;
- seizure of assets; and,
- use of posted security to enforce and pay the order.

5.4 Organizational Liability

Each province has addressed organizational liability in its legislation. Manitoba, Nova Scotia, Quebec, New Brunswick and Saskatchewan each permit the directors, officers or agents of a corporation to be prosecuted as individuals for offences they commit or authorize through the corporation.³⁸³ In the case of Manitoba and Saskatchewan, this is so regardless of whether or not the corporation itself has been prosecuted.³⁸⁴ Nova Scotia elevates the maximum fine in such cases to \$5,000 per day the

³⁷⁴ BC Act, *supra* note 10, s 52; MB Act, *supra* note 11, s 20(7).

³⁷⁵ BC Act, *supra* note 10, s 50(1); MB Act, *supra* note 11, s 20(7).

³⁷⁶ BC Act, *supra* note 10, s 61.

³⁷⁷ *Ibid*, ss 55(1)-(2).

³⁷⁸ *Ibid*, ss 50(2)-(4).

³⁷⁹ MB Act, *supra* note 11, s 20(7).

³⁸⁰ QC Regulation, *supra* note 12, s 37.

³⁸¹ QC Act, *supra* note 14, s 111.

³⁸² QC Act, *supra* note 14, s 113.

³⁸³ MB Act, *supra* note 11, s 28(3); NS Code, *supra* note 11, s 94(1)(b); SK Act, *supra* note 10, s 40(5); QC Act, *supra* note 14, s 142; NB Act, *supra* note 10, s 84.

³⁸⁴ MB Act, *supra* note 11, s 28(3); SK Act, *supra* note 10, s 40(5).

offence is committed as compared with \$2,500 per day for other individuals.³⁸⁵ Recent regulation in Saskatchewan now makes recruiters vicariously liable for the actions of their “employees, partners, affiliates and agents.”³⁸⁶

BC has taken the broadest approach on this point. Its legislation creates vicarious liability for recruiters whose partners, affiliates or agents fail to comply with the Act;³⁸⁷ permits complex corporate structures to be treated as a single employer on the basis of “common control or direction” with the possibility of joint and several liability;³⁸⁸ and, like the other provinces listed above, permits directors, officers, employees and agents of a company to be found personally liable for contravening the Act.³⁸⁹

Recommendations

Ensure liability under the relevant provincial statute extends to related individuals, partners, affiliates, employees and agents, for both recruiters and employers.

Create explicit vicarious liability for employer and recruiter entities in respect of relevant parties who may act on its behalf.

5.5 Appeals

Most provinces direct that appeals of decisions under the relevant temporary foreign worker legislation must go before administrative appellate bodies. Limitations on appeals range from 10 to 30 days following a decision.

Table 9: Limitation period on appeals by province

	Limitation Period
British Columbia	30 days from notification of decision
Saskatchewan	20 business days from service of decision
Manitoba	14 days from decision
Quebec	30 days from notification of decision
Nova Scotia	10 days from notification of decision
New Brunswick	14 days from notification of decision

³⁸⁵ NS Code, *supra* note 11, s 94(1)(b).

³⁸⁶ SK Regulation, *supra* note 105, Appendix, s 10.

³⁸⁷ BC Act, *supra* note 10, s 25. Note that this section does not specify whether the violations of the Act must occur in BC for a BC-licensed recruiter to be held liable.

³⁸⁸ *Ibid*, s 58.

³⁸⁹ *Ibid*, s 59.

The shortest limitation period is the 10 day period within which licensing and registration decisions may be appealed in Nova Scotia to the Nova Scotia Labour Board.³⁹⁰ Appeals in Manitoba must take place within 14 days and are made to the Manitoba Queen's Bench.³⁹¹ In New Brunswick, a person against whom an order has been made by the Director or whose complaint has been dismissed by the Director may apply to have this decision referred to the Labour and Employment Board within 14 days of notification of the decision.³⁹² Saskatchewan permits those affected by a decision to appeal it to an adjudicator, and subsequently to the Court of Queen's Bench for Saskatchewan, within 20 business days following service.³⁹³

The longest limitation periods are in BC and Quebec. BC provides a 30-day limitation period for reconsiderations of licensing and registration decisions as well as for appeals.³⁹⁴ In Quebec, an agency whose licence application is denied, whose licence is suspended, revoked, or not renewed, or on which an administrative measure is imposed and who wishes to contest this decision of the CNESST may do so before the Administrative Labour Tribunal within 30 days of notification of the decision.³⁹⁵

Manitoba, which lacks many of the administrative prohibitions and penalties that exist in other provinces, has not set out explicit instructions for appeals of enforcement orders except as these overlap with provisions of the provincial *Employment Standards Act*.³⁹⁶

5.6 Enforcement Data

As with investigations, significant inconsistency in available information concerning enforcement and penalties exists across provinces, hampered in part by ineffective data collection and management systems. This section presents publicly available information where it was identified.

³⁹⁰ NS Code, *supra* note 11, s 89Z(3). NS allows for further appeal within 30 days to the Nova Scotia Court of Appeal on a question of law or jurisdiction: s 20(2).

³⁹¹ MB Act, *supra* note 11, s 21(2).

³⁹² NB Act, *supra* note 10, ss 67(1)–(1.1).

³⁹³ SK Act, *supra* note 10, ss 49.1(1), 52(2).

³⁹⁴ BC Act, *supra* note 10, ss 18(1), 68(3).

³⁹⁵ QC Act, *supra* note 14, s 92.8. Prior to rendering a decision, CNESST must also provide the license holder with 10 days to contest the suspension or revocation: s 41.

³⁹⁶ MB Act, *supra* note 11, s 20(7).

Recommendations

Create usable and searchable internal databases for recording information obtained under the provincial statute including in relation to employers, recruiters and workers in the province.

Conduct regular review of internal data to monitor the operational effectiveness of the legislative regime such as: types and frequency of non-compliance found; types and frequency of penalties used to address non-compliance; information on enforcement of orders; information on appeals and outcomes; and, other indicators.

Regularly publish aggregate data on penalties and remedies levied and enforced under the statute.

5.5.1 Manitoba

According to the CCR, in 2015-2017, the SIU completed 36 investigations related to temporary foreign workers and other newcomers.³⁹⁷ The SIU found that 52% of employers or recruiters were non-compliant with at least one major provision under the *Employment Standards Code* or *WRAPA*.

Penalties and orders were largely financial in nature. In three workplaces, about \$62,000 was returned to foreign workers who had paid recruitment fees contrary to *WRAPA*.³⁹⁸ In two cases, the employer had used an unlicensed recruiter and in one case the licensed recruiter charged illegal fees and was stripped of their licence.³⁹⁹ Overall, during this time period, it is reported that \$20,000 in administrative penalties were paid and cease and desist letters were sent to 22 unlicensed recruiters.⁴⁰⁰

Manitoba appears to adopt a graduate scale of enforcement, focusing initially on education and rectification of the immediate issue. For example, employers may be issued a formal Notice to Comply. Employers may also be required to pay retroactive wages to workers as well as returning any recruitment fees that were charged to workers.⁴⁰¹ Administrative penalties may be, and have been, applied to repeat non-compliant employers. Names of business who were repeat offenders have also been published on the Employment Standards website.⁴⁰²

5.5.2 Saskatchewan

Limited data concerning enforcement and penalties was available from both government and secondary sources in Saskatchewan. In the Ministry of Economy's 2015-2016 Annual Report, it noted that \$50,000 in illegal recruitment fees and unpaid wages were recouped for temporary foreign

³⁹⁷ CCR, "Provincial Report Cards", *supra* note 28 at 13.

³⁹⁸ *Ibid.*

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ibid.*

⁴⁰¹ *Ibid.*

⁴⁰² *Ibid.*

workers as a result of its investigations.⁴⁰³ In 2016-2017, 259 completed investigations resulted in over \$200,000 in wages recovered for temporary foreign workers.⁴⁰⁴ In contrast, the Ministry of Labour's 2018-2019 report stated that 99.5% of employers audited were found in compliance and did not provide any statistics concerning penalties or financial recovery of wages or fees for temporary foreign workers.⁴⁰⁵

From 2014-2017, CCR reports that 28 employers were suspended under *FWRISA* and \$200,678 wages were recovered as a result of audits and investigations.⁴⁰⁶

Anecdotal information suggests that Saskatchewan may also employ additional remedies in cases involving serious misconduct. For example, in one example involving a Saskatoon-based fitness facility, an employer was investigated for illegally classifying migrant workers as "independent contractors" and underpaying them between \$15,000 and \$19,000. Both infractions put the status of the workers in Canada in jeopardy as applications for contractors are not eligible through the SINP. The employer also failed to comply with the PIU's request for additional information. In this case, the PIU tasked the employer with additional reporting standards, required them to pay the wage shortfall, and imposed a timeline for assisting the migrant workers in achieving a professional certification, and thus full-time employment.⁴⁰⁷

5.5.3 Nova Scotia

No aggregate data or statistics were available concerning enforcement activities in Nova Scotia. However, there were four cases reported at the Nova Scotia Labour Board under sections 89(B)-(Z) of the *Labour Standards Code*.

The first case centered on the issue of recruitment licenses.⁴⁰⁸ The Director of Labour Standards issued a decision refusing to renew the appellant's license. There was uncertainty in the record-keeping regarding whether recruitment fees are always paid by the employers or are sometimes charged to employees. The appellant had refused to supply additional records to verify his recruitment fee structure. The Labour Board found that the Director of Labour Standards has discretion to refuse license renewal where financial information is not provided and does not need to conduct further investigations into the licensee's affairs to determine whether recruiting fees were charged to foreign workers before refusing license renewal.

⁴⁰³ Saskatchewan, *Annual Report for 2018-2019* (Regina: Ministry of the Economy, 2016) <publications.saskatchewan.ca/#/home> accessed 23 June 2021 at 6.

⁴⁰⁴ *Ibid.*

⁴⁰⁵ Saskatchewan, *Annual Report for 2018-2019* (Regina: Ministry of Labour Relations and Workplace Safety, 2016) <publications.saskatchewan.ca/#/home> accessed 23 June 2021 at 6.

⁴⁰⁶ CCR, "Provincial Report Cards", *supra* note 28 at 11.

⁴⁰⁷ Stevens, *supra* note 142 at 15.

⁴⁰⁸ *Immigration Consultant Atlantic Ltd v Director of Labour Standards*, 2019 NSLB 10.

Two cases involved issues regarding unpaid wages, where the minimum number of hours under the Labour Market Opinion form is not made available.⁴⁰⁹ In both cases, the Director of Labour Standards received a complaint from the foreign worker, investigated the employer, and awarded unpaid wages to the foreign worker. The Labour Board dismissed the appeal from the employer and found that the minimum number of hours in Labour Market Opinion must be made available or paid for if no work is available. The Labour Board emphasized the importance of considering the vulnerability of foreign workers in its decisions and ensuring that the protections afforded by section 89 are not undermined.⁴¹⁰

The last case centered on enforcement of *Labour Standards Code* mandatory break provisions for foreign workers.⁴¹¹ The Director of Labour Standards conducted investigations and audits into worker conditions of temporary foreign workers employed by the employer farm. This was a proactive audit and not a complaint-driven process. The Labour Board agreed with the Director that even where break provisions are explained to foreign workers, a clear and documented explanation must be provided, such as obtaining a signature of each employee to indicate their understanding and agreement in their native language.

⁴⁰⁹ Re Martinez and Muir, 2016 CarswellINS 143; Lee v ScotiaCare Homecare & Caregivers Inc, 2014 NSLB 53.

⁴¹⁰ Lee v ScotiaCare Homecare & Caregivers Inc, 2014 NSLB 53.

⁴¹¹ Millen Farms Limited v Director of Labour Standards, 2019 NSLB 2.

6. Recommendations

This report has analyzed the different legislative approaches to regulating the recruitment and employment of temporary foreign workers across a number of provinces including BC, Saskatchewan, Manitoba, Quebec, Nova Scotia, and New Brunswick. As set out in each chapter, this report makes a number of recommendations based on identifiable 'best practices' under each of the legislative approaches. This final chapter synthesizes these recommendations along three key axes for future work and reform: legislative and policy reform; access to justice; and, operational effectiveness.

6.1 Legislative and Policy Reform

As discussed in this report, provinces across Canada have taken different legislative approaches to regulating the recruitment and employment of temporary foreign workers. While many of the provincial regimes present significant areas of overlap, some distinct legislative provisions and approaches appear in select provinces and may serve as useful examples for legislative reform to increase consistency and effectiveness across provinces.

Recruiter Registration	<p>Adopt a Code of Conduct (as in Saskatchewan) that provides detailed guidance for both applicants and statutory authorities evaluating applications on expectations of behaviours and which may influence adjudication of an application and constitute a refusal where there are reasonable grounds to believe the recruiter will not act lawfully or in the public interest (Chapter 2)</p>
	<p>Require all recruiter applicants to include in their application:</p> <ul style="list-style-type: none"> • the names and addresses for all businesses they have conducted business under in the previous five years (as in Nova Scotia); • the articles of incorporation and bylaws of any associated company (as in Nova Scotia) and for all corporations they have conducted business under in the previous five years; and, • a statutory declaration outlining their compliance with the Code, their criminal record and prior civil liability, and any past denial or revocation of any licence pursuant to the statute (Chapter 2)
	<p>Require all licensed recruiters to post security in a substantial amount (as in BC: \$20,000). This provides a meaningful amount of security in the event of contravention and judgment against a recruiter and may also act as a deterrent for recruiters who would otherwise intend to contravene the statute (Chapter 2)</p>
	<p>Require all recruiters to file copies of their contracts with the provincial authority to facilitate greater data collection and support auditing or other investigative activities (Chapter 3)</p>
	<p>In addition to requirements for recruiters to retain records concerning their services and clients, require recruiters to retain records of expenses and payments concerning their services for temporary foreign workers and employers of temporary foreign workers, including description and explanation for expenses and payments (Chapter 3)</p>
	<p>Require recruiters to retain copies of any applications submitted on behalf of an employer of temporary foreign workers or a worker, any decisions rendered in respect of an application, and any correspondence concerning an application made in the course of their services (Chapter 3)</p>

Employer Registration	Require employers to register under the provincial statutory regime before engaging in the federal application process to recruit and hire temporary foreign workers (as in Manitoba and New Brunswick) (Chapter 2)
	Require employers to provide detailed information on their initial registration application (as in New Brunswick) to facilitate better data collection concerning temporary foreign workers in the province (Chapter 2)
	Require employers, upon hiring a temporary foreign worker to submit to the relevant provincial authority a signed employment contract with the worker and any accompanying documents. This will provide important documentation for both auditing and investigative purposes in light of known abuses and contractual breaches temporary foreign workers face in Canada (Chapter 2)
	Require all recruiters and employers to file copies of their contracts with the provincial authority to facilitate greater data collection and support auditing or other investigative activities (Chapter 3)
	Expand the grounds on which an employer's application can be refused or registration revoked to include employees and/or agents acting on behalf of an employer (as in Manitoba) (Chapter 2)
	Require employers to report to the relevant provincial authority, upon hiring a worker, the dates of arrival and anticipated departure and provide a copy of the employment contract. Require employers to file a notice at the end of a worker's contract. These filings will allow for greater data collection and auditing of all employers of temporary foreign workers under the province's jurisdiction (Chapter 3)
	Require employers to retain records of all LMIA applications, contracts with temporary foreign workers, and payroll accounts for temporary foreign workers (Chapter 3)

Investigative Powers	Require both employers and recruiters to ensure all electronic records are easily convertible to a readable format and available for inspection where requested pursuant to the relevant statute (Chapter 3)
	Ensure that provincial bodies responsible for investigation and enforcement of the statute have authority to conduct proactive investigations (Chapter 4)
	Enable the relevant provincial investigative authorities to obtain search warrants, where necessary, including in relation to premises outside the workplace and for vehicles and to remove any property that may be evidence of an offence under the statute (Chapter 4)
	Ensure, in accordance with general investigating powers, that the relevant provincial authorities may enter onto workplace property at any time, with or without prior notice or authorization, to facilitate investigative activities (Chapter 4)
	Ensure that provincial investigative authorities have powers to compel document and other disclosure, and to copy and remove records in addition to inspecting them on-site (Chapter 4)
	Ensure that broad information sharing powers exist under the statute including the ability to share relevant information for investigative purposes with other regulatory bodies in the province, other provinces, and, the federal government (Chapter 4)
	Ensure appropriate limits are placed on information-sharing such as firewall requirements not to disclose immigration status to border enforcement authorities except where necessary to the investigation (Chapter 4)
	Ensure appropriate privacy interests are accounted for in information-sharing rules and practices to protect workers from punitive action by any third-party including employers, recruiters or home country authorities (Chapter 4)

Offences and Penalties	Prohibit specific conduct known to impact temporary foreign workers' vulnerability in relation to their recruitment and employment in Canada, including retention of passports and identity documents, providing false or misleading information, and requiring a worker to use employer-approved or specified contractors for recruitment and immigration arrangements (Chapter 3)
	Create specific offences for: <ul style="list-style-type: none"> • falsification or alteration of a document related to activities regulated by the statute; • attempting to commit an offence under the statute; and, • aiding or inciting another person to commit an offence under the statute (Chapter 5)
	Allow for suspension or cancellation of a license or registration where a party fails to comply with the terms, obligations or conditions of that license or registration (Chapter 5)
	Provide the director with discretion to suspend or cancel a license or registration where the party contravenes substantive provisions of, or obligations under, the relevant statute (Chapter 5)
	Provide broad remedial discretion to the relevant provincial authorities including the power to order compliance, injunctive relief, reinstatement, and compensation (Chapter 5)
	Provide the relevant provincial authorities with additional powers to enforce orders, especially monetary orders including through: <ul style="list-style-type: none"> • garnishment of wages; • lien on properties; • seizure of assets; and, • use of posted security to enforce and pay the order (Chapter 5)
	Ensure liability under the relevant provincial statute extends to related individuals, partners, affiliates, employees and agents, for both recruiters and employers (Chapter 5)
	Create explicit vicarious liability for employer and recruiter entities in respect of relevant parties who may act on its behalf (Chapter 5)

6.2 Access to Justice

Access to justice for temporary foreign workers is a key issue. Many of the provincial statutes discussed in this report were created specifically to respond to noted access to justice gaps for temporary foreign workers, as discussed in the Introduction and Chapter 1 of this report. While the legislation ‘on paper’ does some important work to advance access to justice for temporary foreign workers - including both access to rights and entitlements and to remedies and legal mechanisms when those rights and entitlements are violated – there remains important work to be done to ensure that these legislative regimes translate ‘on the ground’ to increase access to justice for temporary foreign workers. Moreover, the existence of both recruiter and employer registries create a vehicle through which access to justice can be supported by creating and imposing obligations on employers and recruiters to ensure that temporary foreign workers are made aware of their rights and obligations, contractual terms, and other relevant information. Finally, access to justice for temporary foreign workers requires effective access to complaints mechanisms.

Access to Information on Rights and Obligations	Ensure that both employers and recruiters are obliged to communicate information to temporary foreign workers’ regarding their rights and obligations as workers in the province (Chapter 3)
	Ensure that communication materials are created by relevant provincial bodies in consultation with experts and available in multiple languages, especially first languages of temporary foreign worker populations (Chapter 3)
	Craft a template contract that clearly sets out all terms and conditions of employment, including those specified under relevant provincial legislation, such as the prohibition on charging or recouping recruitment fees and the requirement to communicate a worker’s rights and obligations under relevant laws (Chapter 3)
	Publish the template contract in multiple languages to facilitate greater understanding and use for workers for whom English is not the first language (Chapter 3)
	Require employers to provide a contract in a language that the worker has sufficient fluency and provide accessible translation supports to facilitate this (Chapter 3)

Access to Registry Information	<p>Ensure recruiter registries are easy to locate and navigate for relevant information (as in BC). This will allow for such registries to be an effective and efficient tool for workers and relevant organizations to use to ascertain the status of a foreign worker recruiter in the province (Chapter 2)</p>
	<p>Publish a list of conditions attaching to specific licenses publicly through the recruiter registries (as in Nova Scotia). This provides greater transparency in relation to the licensing process and outcomes and allows workers, employers and other stakeholders to have full information about the recruiter with whom they may be engaged. This, in turn, may foster greater compliance with the statute and provide more accurate data on contraventions (Chapter 2)</p>
	<p>Provide a public list of suspended and cancelled licenses (as in Saskatchewan). This will further allow for registries to be an effective tool for workers and relevant organizations to use to determine the current status of a recruiter and any past non-compliance or other issues. As with the above recommendations, this may, in turn, foster greater confidence in and compliance with the legislation in each province (Chapter 2)</p>
	<p>Publicize a list of employers who have contravened the legislation, as in Manitoba and Quebec. This may function as a deterrent for employers and related actors to engage in unlawful behaviour (Chapter 2)</p>
	<p>Consider making publicly available a list of employers who employ temporary foreign workers in the province. This would provide greater transparency and increase ease of access for worker advocates and support groups, researchers, and other external actors. This measure would need to be carefully balanced against relevant privacy laws and interests (Chapter 2)</p>
	<p>Proactively publish a list of offenders in order to increase the deterrent effect of the statute and increase transparency for relevant stakeholders and communities (Chapter 5)</p>

Access to Complaints Mechanisms	Ensure that complaints may be filed on behalf of a worker or by third parties to facilitate greater access to justice in initiating investigations (Chapter 4)
	Provide a mechanism for anonymous complaints to be registered and subject to a preliminary investigation to facilitate greater access to justice for temporary foreign workers, who often face significant disincentives to make a formal complaint in relation to their participation under the TFWP in Canada (Chapter 4)
	Ensure that complaint forms and information are available in multiple languages and mediums (i.e., online, by phone, in-person filing options) (Chapter 4)
	Create a user-friendly and simplified complaints form and process and publicly advertise this through available channels including the provinces' websites, in multiple languages, especially first languages of temporary foreign worker populations in the province (Chapter 4)
	Evaluate and clearly communicate what kind of evidence is required to support a complaint, especially knowing the limited availability that many workers and third parties will have to access direct evidence such as documents or records (Chapter 4)

6.3 Operational Effectiveness

In addition to setting out robust right and protections through legislation, statutes must be operationally effective to achieve their stated purposes or goals. For legislation governing the recruitment and employment of temporary foreign workers, this requires, especially, effective penalties and remedies, as well as effective investigations and complaints mechanisms to better ensure compliance. While most of the statutes canvassed in this report set out clear offences and penalties, difficulties arose in assessing the operational effectiveness of the statutes due to a lack of robust and detailed investigations and enforcement data. As such, many recommendations under this metric relate to increasing the collection and publication of such data to enable the operational effectiveness of these statutes to be measured.

Enforcement of Legislation and Regulations	Publish specific guidance, rules and examples of what conditions may attach to a license and when such conditions may be imposed on a recruiter. This will provide greater transparency for stakeholders, including applicants, statutory authorities, workers, employers and the public, in understanding when and how licenses will be granted on a conditional basis and what conditions may be used to ensure compliance under the statute (Chapter 2)
	Conduct proactive investigations both on-site and through regular auditing of employer and recruiter filings (Chapter 4)
	Where a complaint is received without sufficient evidence, institute a practice to conduct a preliminary investigation of the relevant filings and documents concerning the recruiter and/or employer to ascertain possible supporting evidence already available within the regulatory body's records (Chapter 4)
	Ensure financial penalties for serious contraventions of the statute are significant in order to serve as a deterrent for relevant parties (Chapter 5)
	Provide for a graduated scale of monetary penalties to attach to findings of non-compliance in order to serve as an additional deterrent (Chapter 5)

Data Collection, Analysis and Publication	Ensure that databases and information systems recording relevant data, such as employer registrations, are up-to-date and facilitate use, such as the ability to search, summarize, and select particular entries, and generate lists of recorded data (Chapter 2)
	Report statistics and other data publicly concerning proactive investigation and auditing activities (Chapter 4)
	Conduct regular review of internal data to monitor the operational effectiveness of the legislative regime such as: the number of investigations initiated versus completed; the number of recruiters and employers proactively audited or investigated relative to total numbers; rates of compliance and non-compliance based on different investigative activities; and, other indicators (Chapter 4)
	Regularly publish aggregate data on investigation and auditing activities including how many investigations were conducted and completed in the relevant time period, how the investigation was initiated, the outcomes of investigations, and penalties where appropriate (Chapter 4)
	Create usable and searchable internal databases for recording information obtained under the provincial statute including in relation to employers, recruiters and workers in the province (Chapters 4 and 5)
	Conduct regular review of internal data to monitor the operational effectiveness of the legislative regime such as: types and frequency of non-compliance found; types and frequency of penalties used to address non-compliance; information on enforcement of orders; information on appeals and outcomes; and, other indicators (Chapter 5)
	Regularly publish aggregate data on penalties and remedies levied and enforced under the statute (Chapter 5)